

Additional COVID-19 Supplemental Paid Sick Leave Now Available

February 18, 2022

Number 12

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Since the State-provided Supplemental Paid Sick Leave (Senate Bill 95) expired at the end of September 2021, and with the recent COVID-19 surge due to the Omicron variant, both employees and employers have wondered whether the Legislature and Governor would again grant additional paid sick leave to employees affected by COVID-19. On February 9, 2022, Governor Newsom signed Senate Bill (SB) 114 into law providing COVID-19 supplemental paid sick leave for employees. SB 114 takes effect February 19, 2022 (ten days from the date the law was signed), but will apply retroactively to January 1, 2022, expiring on September 30, 2022.

SB 114 adds sections 248.6 and 248.7 to the Labor Code and applies to employers, including those in the public sector, with more than 25 employees. SB 114 differs from SB 95 in that it provides two separate “banks” of 40 hours for full-time employees with respective requirements, instead of one bank of 80 hours of supplemental paid leave. The number of hours provided is prorated for part-time employees.

The first bank of 40 hours of leave, as required by SB 114, may be used for any of the following reasons:

- The employee is subject to quarantine or isolation related to COVID-19, as defined by the California Department of Public Health, the Centers for Disease Control and Prevention, or a local health order or guidance;
- The employee has been advised by a healthcare provider to isolate or quarantine due to COVID-19;
- The employee is attending an appointment for themselves or a family member to receive a COVID-19 vaccine or vaccine booster;
- The employee is experiencing symptoms or caring for a family member experiencing symptoms related to a COVID-19 vaccine or vaccine booster that prevents them from working or teleworking;
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

- The employee is caring for a family member subject to a quarantine or isolation order or has been advised to quarantine or isolate by a healthcare provider; or
- The employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

SB 114 allows an employer to limit the leave used by employees to 24 hours, or three workdays, for each COVID-19 vaccine or vaccine booster, unless the employee provides verification from a healthcare provider that the employee or family member continues to experience symptoms related to the vaccine or booster.

An additional 40-hour bank of leave is offered to full-time employees but is more restrictive. To qualify for this second 40-hour bank, the employee or a family member for whom the employee is providing care must test positive for COVID-19. Again, these hours are prorated for part-time employees. Regarding this bank of leave, employers can require employees provide verification of their positive test and can require the employee to be tested, at the employer's cost, on or after the fifth day following the employee's first positive test. Employers are also authorized to require employees seeking to use this leave to care for a family member to provide documentation of a family member's test result before granting the additional leave. If an employee refuses to provide this documentation, this additional leave entitlement can be denied.

Lastly, SB 114 requires an employer to provide an employee with written notice listing the amount of COVID-19 supplemental paid leave that the employee has used through each pay period. The Labor Commissioner has issued its model notice which is available [here](#), and must be posted in the workplace. Employers can disseminate this notice by E-mail if employees do not frequent the workplace.

Takeaways

Employers should take careful note of the requirements of SB 114 to ensure compliance and make sure a system is in place to keep track of the supplemental leave an employee uses and the reasons for the leave.

Employers who may have reached an agreement with their labor partners to extend COVID-19 related leave following the expiration of SB 95 in September 2021 should also consider how and whether this additional State-provided leave impacts any leave that was granted to employees for similar purposes.

If you have any questions about SB 114, or employee benefits or COVID-19-related employee issues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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