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The Comeback Is Complete 2022 California Supplemental Paid Sick Leave

By: [Li-An Leonard](#)

As noted in an earlier [Buchalter Client Alert](#), Governor Newsom and legislative leaders reached an agreement to bring back COVID-19 Supplemental Paid Sick Leave in 2022. On November 9th, Governor Newsom signed [Senate Bill \(SB\) 114](#) creating California Labor Code § 248.6 and completing the comeback of COVID-19 Supplemental Paid Leave in 2022 or as referred to in this update, 2022 SPSL.

2022 SPSL is similar to 2021 SPSL which will help employers in rolling it out. There are, however, some differences. And, as is common when new legislation is enacted, there are several “but what about...” questions which require further guidance or clarification from the California Labor Commissioner by way of updates to its FAQs.

While waiting for the California Labor Commissioner to update its FAQs, here are a few key “comeback” stats for employers to take note of:

- ***Retroactive to January 1, 2022***

- Although the comeback is retroactive to January 1, 2022, employers are not obligated to provide 2022 SPSL until February 19, 2022.
- Employees who had COVID-19 related absences on or after January 1, 2022, but prior to February 19, 2022, may ask for retroactive 2022 SPSL payments.
- Employers who paid for COVID-19 related absences after January 1, 2022, but prior to February 19, 2022, may be able to credit such payments against their 2022 SPSL obligation.

- ***Applies to employers with 26 or more employees***

- The comeback does not apply to employers with 25 or fewer employees.
- However, all employers, including small employers, are reminded of their obligations under Cal/OSHA's Emergency Temporary Standards or ETS (www.dir.ca.gov/dosh/coronavirus/covid19faqs.html) to provide exclusion pay if an employee misses work due to a COVID-19 exposure in the workplace.
- Special provisions apply to firefighters, as well as to providers of in-home supportive and/or waiver of personal care services.

- ***Maximum Bank of Hours***

- Full-time employees receive up to 80 hours of 2022 SPSL.

- Part-time employees with a normal weekly schedule receive 2022 SPSL in proportion to their schedule.
- Part-time employees with a variable schedule receive 2022 SPSL based on average amount of hours worked in prior six-month period.
- **Permissible Uses¹**
 - A full-time employee may take up to 40 hours of 2022 SPSL *if the employee is unable to work or telework* for any of the following reasons:
 - **Vaccine-Related:** The covered employee is attending a vaccine or booster appointment for themselves or a family member or cannot work or telework because they have vaccine-related symptoms or are caring for a family member with vaccine-related symptoms. An employer may limit an employee to 24 hours or 3 days of leave for each vaccination or booster appointment and any consequent side effects, unless a health care provider verifies that more recovery time is needed.
 - **Caring for Yourself:** The employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the workplace; has been advised by a healthcare provider to quarantine; or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
 - **Caring for a Family Member:** The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
 - A full-time employee may take up to an additional 40 hours of leave *if the employee is unable to work or telework* for either of the following reasons:
 - The covered employee tests positive for COVID-19.
 - The covered employee is caring for a family member who tested positive for COVID-19.
 - A family member includes a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.

¹ 2022 COVID-19 Supplemental Paid Sick Leave, California Department of Industrial Relations

- **Notice and Paystub Requirements**

- The California Labor Commissioner recently published a 2022 COVID-19 Supplemental Paid Sick Leave Workplace Posting, www.dir.ca.gov/dlse/covid19resources/2022-covid-19-SPSL-Poster.pdf.
- Employers are required to post and distribute the new Workplace Posting before February 19, 2022.
- The 2022 COVID-19 Supplemental Paid Sick Leave Workplace Posting may be distributed electronically to employees working remotely.
- Employers are also required to display on paystubs (or other written notices that employees receive on payday) the amount of any 2022 SPSL used.

- **Expires September 30, 2022**

- 2022 SPSL expires on September 30, 2022.
- However, if an employee is taking 2022 SPSL as of September 30, 2022, the employee may finish taking any remaining amount of 2022 SPSL he or she is otherwise entitled to receive.

- **Tax Credits**

- There is no dollar-for-dollar tax credit, federal or state, to cover 2022 SPSL.
- California Legislature recently restored research and development and net operating loss credits which were suspended and capped two years ago. These are not a dollar-for-dollar credit, but are intended to help employers offset the cost of 2022 SPSL.

- **Updated 2022 COVID-19 Supplemental Paid Sick Leave FAQs**

- Employers are encouraged to monitor the California Labor Commissioner's COVID-19 Guidance and Resources for its updated 2022 COVID-19 Supplemental Paid Sick Leave FAQs at www.dir.ca.gov/dlse/COVID19resources/.



Li-An Leonard

Special Counsel
Labor & Employment
(619) 219-8066 or
lleonard@buchalter.com

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