Engage PEO Client Alert

California 2022 COVID-19 Supplemental Paid Sick Leave

What's New: As of February 19, 2022, **California employers with 25 or more employees are required to provide employees up to 80 hours of new COVID-19 Supplemental Paid Sick Leave** (SPSL). This requirement applies retroactively for covered employee absences from January 1, 2022 and continues through September 30, 2022.

What This Means: Under the new legislation, California employees now have access to paid time off due to COVID-19—which is in addition to already mandated state and/or local regular paid sick leave. Full time employees are entitled to **up to 40 hours of SPSL if they are unable to work due to various specified COVID-19 related reasons**. Full time employees may also be entitled to **an additional 40 hours of SPSL if they test positive for COVID-19, or a family member for whom the employee is providing care tests positive for COVID-19**.

How It Works: Although in many ways similar to last year's SPSL law, this year's law is different in several key respects. Most significantly, the new SPSL is split into 2 "batches," each of which entitle employees to unlock up to 40 hours of SPSL:

Batch #1: The employee is unable to work or telework because:

a. They—or a family member under their care—are subject to a COVID-19-related quarantine or isolation period as defined by certain federal, state, or local agencies;
b. A healthcare provider advised them to isolate or quarantine due to COVID-19;
c. They are seeking medical diagnosis due to experiencing COVID-19 symptoms;
d. They are caring for a child whose school or place of care is closed/unavailable due to COVID-19 exposure on the premises; or
e. They—or a family member under their care—are obtaining a COVID-19 vaccine (including boosters), or are experiencing vaccine-related symptoms that prevent the employee from working;

If the employee is requesting leave for reasons covered under (e), employers may initially limit the total leave time to 24 hours. If the employee needs more recovery time, they may be required to provide verification from a healthcare provider demonstrating that they or the family member for whom they are caring is continuing to experience symptoms related to a COVID-19 vaccine or vaccine booster.

Batch #2: The employee is unable to work or telework because:

a. They tested positive for COVID-19; or
b. A family member for whom they are caring tested positive for COVID-19.

In either case, employers may require the employee to submit proof of a positive test for themselves or their family member before granting the additional leave available in this batch. The same requirement may also be imposed on employees seeking retroactive payment for an absence prior the law going into effect.

Part time employees are also eligible for SPSL under this law, which outlines the exact formula that should be used to calculate the amount to which they are entitled under each batch. Generally, the amount depends on how many hours the employee typically works and may vary greatly for each employee. As such, part time employees' requests should be analyzed closely and evaluated on a case-by-case basis.

Retroactive Payment: Upon an employee's written or oral request, employers must issue retroactive payments for any unpaid time taken for qualifying reasons since January 1, 2022 by the next scheduled payday after the request is made. Employers also need to replenish other paid leave banks, such as general sick leave and PTO, if used to compensate the employee for any portion of their leave.

Pay: SPSL must be paid at an employee's regular rate of pay, calculated in the same manner used for standard paid sick time.

Wage Statements: Employee paystubs must list the total amount of SPSL hours that have been *used* through the end of the applicable pay period. This differs from both the requirements under last year's SPSL as well as the standard paid sick leave, both of which required listing the amount *available* for use.

Engage has set up a separate plan to track SPSL for payroll purposes consistent with these requirements. Clients should contact their assigned Payroll Specialist with any questions to ensure appropriate coding.

Interaction With Other Laws: Under the new law, employers may not require employees to first exhaust SPSL before obtaining exclusion pay under Cal/OSHA's COVID-19 Emergency Temporary Standards. Therefore, if an employee is excluded from work due to a workplace exposure to COVID-19 and qualifies for exclusion pay, the time off cannot be deducted from the employee's SPSL bank, general sick bank or PTO/vacation bank. Instead, employees' earnings must be maintained with no impact to any leave bank.

Employers may, however, in some circumstances count leave mandated under local COVID-19 paid sick leave ordinances toward their obligation under the new state law, provided that the leave was available for the same reasons and compensates the employee in an amount equal to or greater than the amount of SPSL.

Notice Requirements: Employers must post this notice in the workplace, as well as email a copy to all employees who do not physically report to work.

Clients are encouraged to reach out to their assigned HR Consultant for any particularized guidance on the new SPSL.