

<b>HUMAN RESOURCES MEMORANDUM 21-006</b>		DATE ISSUED: 03/30/2021
SUBJECT: <b>SENATE BILL 95 COVID-19 SUPPLEMENTAL PAID SICK LEAVE</b>		REFERENCE: CalHR 2127
TO: All DGS Employees		SUPERCEDES: None

**PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES**

**Purpose**

The purpose of this memorandum is to provide information on Senate Bill (SB) 95 COVID-19 Supplemental Paid Sick Leave (SPSL).

**Background**

On March 18, 2020, the federal government enacted the Families First Coronavirus Response Act (FFCRA), which enacted both the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

On September 9, 2020 Assembly Bill (AB) 1867 was chaptered and became effective September 19, 2020. AB 1867 provides SPSL to employees designated as health care workers or emergency responders in departments who have exempted those employees from the FFCRA. DGS employees were not eligible for benefits under AB 1867.

Both the FFCRA and AB 1867 programs expired December 31, 2020.

**SB 95 COVID-19 Supplemental Paid Sick Leave**

The SB 95 SPSL is retroactive to January 1, 2021, applies to all DGS employees except Retired Annuitants, and is in addition employee's other leave balances. SB 95 SPSL is separate and any leave used under the FFCRA does not count against this new entitlement.

SB 95 SPSL will be documented as ATO-SPSL-21 in employee's PAL. Employees may be eligible to take **up to** 80 hours of SB 95 SPSL if they are unable to work or telework due to any of the following reasons:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace; or
2. The employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
3. The employee is attending an appointment to receive a COVID-19 vaccine; or
4. The employee is experiencing symptoms related to receiving the COVID-19 vaccine that prevent the employee from being able to work or telework; or

5. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or
6. The employee is caring for a family member as defined in the California Labor Code, section 245.5 subdivision (c), who is subject to an order or guidelines under number 1 or 2; or
7. The employee is caring for a child as defined in the California Labor Code, section 245.5, subdivision (c), whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

The employee's time base determines the number of SB 95 SPSL hours the employee is entitled to receive.

- Full-time employees receive up to 80 hours of SB 95 SPSL at the employee's regular rate of pay.
- Part-time employees with a set time base receive a prorated amount based on their time base.
- Intermittent employees receive 14 times the average number of hours worked each day during the preceding six months, up to 80 hours. The calculations are as follows:
  - To calculate the average number of hours worked by an intermittent employee with a variable schedule over the past six months, the figure is determined based on the total number of days in the 6-month period, not just the number of days worked.
  - If the intermittent employee has worked less than six months, determine the average for the time the employee has worked for the state.

This leave is available for immediate use by the eligible employee, upon the verbal or written request of the employee to their manager or supervisor. Managers and supervisors cannot require an eligible employee to use other leave before the use of SB 95 SPSL, including PLP 2020. Upon verbal or written request by the employee, DGS shall provide the employee with a retroactive payment if the request meets one of the reasons listed above. Retroactive payments require an amended PAL timesheet submitted by the employee and approved by their supervisor.

If an eligible employee is otherwise entitled to receive Industrial Disability Leave (IDL) or Enhanced Industrial Disability Leave (EIDL), the use of SB 95 SPSL shall not count against the employee's maximum IDL or EIDL entitlement. An eligible employee may receive SB 95 SPSL during the waiting period for IDL or EIDL.

Employers may not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of SB 95 SPSL.

#### **Documentation for SB 95 SPSL**

Substantiation is required for school or childcare closures. DGS managers and supervisors will follow their normal process for sick leave substantiation for the other SB 95 SPSL reasons. However, the leave should be granted immediately, and the employee should be allowed reasonable time to provide the needed substantiation.

## Notice Requirements

The California Labor Commissioners Office has a required Workplace Poster which can be accessed through the following link <https://www.dir.ca.gov/dlse/2021-COVID-19-Supplemental-Paid-Sick-Leave.pdf>.

## Expiration

The SB 95 SPSL expires on September 30, 2021, except that a covered employee taking SB 95 SPSL at the time of expiration shall be permitted to take the full amount to which the employee otherwise would have been entitled.

## Reporting/Timekeeping

Paid sick time for this purpose will be documented in the Project and Accounting Leave (PAL) system using alias ATO-SPSL-21.

Any previous Administrative Time Off provided to employees due to COVID-19 prior to March 1, 2021, does not count toward the employee's supplemental paid sick leave entitlement.

Employers may not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of emergency paid sick leave.

Employees must follow their standard program procedure in order to request time off under the SPSL.

The newly established alias for documenting leave usage for SPSL in PAL is available for immediate use: Alias Code - ATO-SPSL-21 and can be retroactively used back to January 1, 2021.

If an employee has used other Leave benefits since January 1, 2021 for any of the qualifying reasons listed above, employee must complete an [OHR 22](#) to change their leave usage to ATO-SPSL-21 and submit the form to their Attendance Clerk for processing.

Employees must clearly document on their timesheet in the PAL comments section that SB 95 SPSL is being utilized. For example: when using any portion of the entitlement, SB 95 SPSL should be identified in the comments section, along with the dates taken. In addition, the employee should document the time off as ATO-SPSL-21 time for the applicable days and hours the leave is used.

## Intermittent Leave Use

Eligible employees may use SB 95 SPSL leave intermittently if they are unable to work or telework to care for an employee's child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 related reasons. Additionally, if an eligible employee who is teleworking away from the normal worksite and is unable to work or telework due to any of the qualifying reasons may use SB 95 SPSL intermittently. For example, SB 95 SPSL may be used in increments if the employee is teleworking due to exposure and subsequently becomes sick with COVID and can no longer telework.

## Payments

Payments under this program are not subject to the PLP 2020 reduction, although the law provides a maximum benefit allowance, the State provides a better benefit than the law and allows the employee to receive their full pay for SB 95 SPSL.

## Questions

If you have questions, please contact Amy Applegate at (916) 376-5428 or via e-mail at [Amy.Applegate@dgs.ca.gov](mailto:Amy.Applegate@dgs.ca.gov).

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