

<b>HUMAN RESOURCES MEMORANDUM 22-004</b>		DATE ISSUED: 2/17/2022
SUBJECT: <b>COVID-19 SUPPLEMENTAL PAID SICK LEAVE 2022</b>		REFERENCE: <a href="#">CalHR Manual 2127</a> <a href="#">Senate Bill No. 114</a>
TO: All DGS Employees		SUPERSEDES: None

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

**Purpose**

The purpose of this Human Resources Memorandum (HR Memo) is to provide information on Senate Bill (SB) 114 Covid-19 Supplemental Paid Sick Leave (SPSL) 2022.

**Introduction**

On February 9, 2022, SB 114 was signed and is retroactive to January 1, 2022. SB 114 created new Labor Code Section 248.6, which provides supplemental paid sick leave (SPSL) to all employees for the reasons listed in the section below.

**SB 114 Covid-19 Supplemental Paid Sick Leave 2022**

SB 114 SPSL is separate from all previous Covid-19 sick leave benefits. The employer shall make this leave available to eligible employees upon the oral or written request of the employee to the supervisor.

For purposes of this policy a family member is defined in California Labor Code, Section 245.5, subdivision (c) and includes child, parent, spouse, registered domestic partner, grandparent, grandchild, and sibling.

Employees may be eligible to take up to 40 hours of SB 114 SPSL if they are unable to work or telework due to any of the following reasons:

1. The employee is subject to a quarantine or isolation period related to Covid-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer who has jurisdiction over the workplace.
  - If the employee is subject to more than one of the above, the covered employee shall be permitted to use Covid-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidance that provides the longest period; or
2. The employee is advised by a health care provider to isolate or self-quarantine due to a Covid-19 concern or tests positive; or

3. The employee is attending an appointment for themselves or a family member to receive a Covid-19 vaccine or vaccine booster that prevents the employee from being able to work or telework; or
4. The employee is experiencing symptoms or is caring for a family member related to a Covid-19 vaccine or vaccine booster that prevents the employee from being able to work or telework; or
  - For each vaccine or vaccine booster, paid sick leave for this purpose may be limited to three days or 24 hours unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms. The limitation includes any time used under number 3 above to obtain the vaccine.
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 who is subject to an order or guidance under number 1 or who has been advised to isolate or quarantine under number 2; or
7. 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.

The employee's time base determines the number of SB 114 SPSL hours the employee is entitled to receive at their regular rate of pay:

- Full-time employees receive up to 40 hours.
- Part-time employees with a set time base receive a prorated amount based on their time base.
- Intermittent employees with a set weekly schedule will receive the number of hours normally scheduled for the workweek.
- Intermittent employees who work variable hours receive seven times the average number of hours worked each day during the preceding six months, up to 40 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 calendar days in the 6-month period, not the number of physical days worked.
    - For example:  $520$  (number of hours the employee worked in the six-month period) /  $182$  days (number of days in a six-month period) =  $2.857$  average hours per day x  $7$  days =  $20$  hours. The employee is entitled to 20 hours of initial SB 114 SPSL.

- If the intermittent employee has worked less than six months but more than 7 days, the calculation shall be made over the entire period the covered employee has worked. The figure is determined based on the total number of calendar days in the period the employee worked, not the number of physical days worked.
- If the intermittent employee has worked less than 7 days, the employee is entitled to the number of hours worked for that period, but no more than 40 hours.

### **Additional SB 114 SPSL and Obligations**

Employees may be eligible to take additional SB 114 SPSL not to exceed what the employee was entitled to in the above section, if the covered employee, or family member who the employee is caring for, tests positive for Covid-19.

If the employee tests positive, employees should follow current testing and reporting guidelines outlined in HR Memo [22-002](#). SB 114 allows the department to require employees who have tested positive to submit to a diagnostic test on or after the fifth day after the initial Covid-19 test was taken and provide documentation of these results. DGS programs will determine if employees are required to test on or after the fifth day based on operational needs. In such circumstances, testing shall not be done at the worksite. If the DGS program requires the employee to test, the employee may seek reimbursement for out-of-pocket expenses for the Covid-19 test through the Travel Expense Claim (TEC) [STD. 262](#) process. Testing shall meet the requirements set forth in the Department of Industrial Relations, Division of Occupational Safety and Health, Emergency Temporary Standards (Cal/OSHA ETS).

If the employee requests additional SB 114 SPSL due to a positive test for a family member for whom they provide care for, DGS may require that the employee provide documentation of that family member's test results before providing the additional leave. Departments are not obligated to provide additional SB 114 SPSL to an employee who refuses to provide documentation outlined in this section.

The total number of SB 114 SPSL may not exceed 80 hours. In addition, this policy does not limit an employer's duties to comply with the Cal/OSHA ETS.

### **Availability and Retroactivity of SB 114 SPSL**

The effective date of SB 114 SPSL is **January 1, 2022**. Departments shall make SB 114 SPSL available to the employee immediately upon the oral or written request of the employee to their supervisor. Employees must follow their office's standard procedure in order to request time off under the SPSL. Departments cannot require an eligible employee to use other leave.

Employees may retroactively use SB 114 SPSL back to January 1, 2022, upon verbal or written request and the employer shall provide the covered employee with a retroactive payment if the request meets one of the covered reasons. Additionally, departments may require an employee to provide documentation of a positive

diagnostic test for the relevant period of retroactive use. Retroactive use also requires an amended timesheet submitted by the employee and approved by their supervisor. Retroactive payments shall be paid to the employee on or before the payday for the next full pay period after the oral or written request of the employee.

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

Employers shall not discharge, discipline, or otherwise discriminate against any employee based upon the employee's use of SB 114 SPSL.

### **Expiration**

SB 114 SPSL expires on **September 30, 2022**, except if a covered employee is utilizing SB 114 SPSL at the time of expiration, they shall be permitted to take the full amount without interruption as noted in the section above.

### **Application**

#### Timesheet Documentation

Paid sick leave for the purposes outlined in this HR Memo will be documented in the Project and Accounting Leave (PAL) system using alias **ATO-SPSL-22**. The ATO-SPSL-22 will become active in PAL during the week of February 21, 2022 after State Controller's Office establishes the leave benefit. The newly established alias for documenting leave usage for SPSL in PAL can be retroactively used back to January 1, 2022.

Any previous Administrative Time Off (ATO) provided to employees due to Covid-19 prior to January 1, 2022, 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.

If an employee has used other Leave benefits since January 1, 2022, for any of the qualifying reasons listed above, the employee must submit an amended timesheet for approval by their supervisor. If the requested change affects a timesheet older than one (1) month prior, the corrections must be documented on the [OHR 22](#) and submitted to the OHR Personnel Transactions Unit for processing.

Employees must clearly notate on their timesheet in the PAL comments section that SB 114 SPSL is being utilized. The notation on the timesheet should clearly identify the qualifying reason leave is being used. For example: if leave is used due to a positive test or the employee is experiencing symptoms from the vaccine, it should be clearly stated in the comments section. In addition, the employee should enter the time off using the ATO-SPSL-22 alias for the applicable days and hours the leave is used.

### Intermittent Leave Use

Eligible employees may use SB 114 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 on the premises. Additionally, if an eligible employee who is teleworking away from the normal worksite is unable to work or telework due to any of the qualifying reasons the employee may use SB 114 SPSL intermittently. For example, SB 114 SPSL may be used in increments if the employee is teleworking due to exposure and subsequently becomes sick with Covid-19 and can no longer telework.

### **ATO for Covid-19 Vaccinations**

Employees will continue to be allowed up to two (2) hours of ATO per Covid-19 vaccine appointment, including any Covid-19 booster vaccine as outlined in HR Memo [21-005](#). Eligibility to receive administrative time off is subject to documentation showing the employee's Covid-19 vaccination appointment date and time. Time shall be recorded in PAL as **ATO-SAFE** for time keeping purposes. Employees should note Covid-19 Vaccine in the PAL comments section. ATO for this purpose is not counted against the employee's SB 114 SPSL entitlement.

### **Questions**

If employees have questions regarding the guidance and information in this memorandum, they are encouraged to contact their supervisor and/or employee representative as appropriate.

**ESTELA GONZALES**, Chief  
Office of Human Resources