

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

California Reinstates COVID-19 Paid Sick Leave

On February 9, 2022, Governor Gavin Newsom signed the bill re-establishing California COVID-19 Supplemental Paid Sick Leave (COVID PSL). **This law takes effect immediately, and is retroactive to January 1, 2022, but the employer's obligation to pay for COVID PSL does not begin until 10 days from today, on February 19, 2022.**

1. **Covered Employers.** The new leave program covers employers with 26 or more workers.
2. **Effective Date.** COVID PSL will be retroactive to January 1, 2022 and will expire on September 30, 2022. Employees can start requesting COVID PSL on or after February 19, 2022 and may make leave requests for time taken from January 1, 2022 and after. Retroactive COVID PSL payments must be paid “on or before the payday for the next full pay period after the oral or written request of the covered employee.”
3. **Available Leave.** There will be two banks of COVID PSL available to eligible employees. One bank, of up to 40 hours, is available for all covered reasons, including if the covered employee:
 - is subject to a quarantine or isolation period related to COVID-19 as defined by guidance/an order of the State Department of Public Health, the federal Centers for Disease Control and Prevention (CDC), or the applicable local public health department;
 - has been advised by a health care provider to isolate or quarantine due to COVID-19;
 - is attending an appointment for themselves or a family member to receive a COVID-19 vaccine or vaccine booster;
 - is experiencing symptoms or caring for a family member experiencing symptoms after receiving a COVID-19 vaccine or vaccine booster;
 - is experiencing COVID-19 symptoms and seeking a medical diagnosis;

- is caring for a family member who is subject to an order or guidance to quarantine or isolate;
- is caring for a child, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19.

A second bank of up to 40 hours is available if the covered employee can show proof that they or an immediate family member has tested positive for COVID-19.

4. **Documentation Required**. Employers can require documentation of the positive test. If the worker refuses to take the test or fails to show a positive test result, no additional COVID PSL will be granted. The exact nature of the documentation employers will be able to require is unclear, and we expect the FAQs to provide some clarification.

If an employee tests positive, the employer may require the employee to submit to a diagnostic test on or after the fifth day and require documentation of results (but must make that test available at no cost to the employee).

5. **Reduced Amounts for Part Time Employees**. Part time employees are eligible for COVID PSL equal to the number of hours they work in a week (or twice that amount with a positive COVID-19 test).
6. **COVID PSL Limits for Vaccine-Related Leave**. Employees may only take up to 24 hours per vaccine/booster injection unless the employee provides verification from a health care provider that the covered individual is continuing to experience symptoms related to the vaccine or booster.
7. **Wage Statement Requirement**. Employers must list the amount of COVID PSL that has been *used* on employee paystubs. This should be a separate line item from any other sick leave banks. If an employee has not yet used any COVID PSL, their statement must list "0/zero". For retroactive payments, the amount of COVID PSL taken should be shown on the paystub for the pay period in which the retroactive payment was made.
8. **Regular Rate of Pay**. The rate of pay for COVID PSL is the same as California's regular paid sick leave under Labor Code Section 246. The \$511/day cap remains in place.
9. **Credit for Previously Paid Covered Leave**. Employers that have provided COVID-19 related leave for reasons covered by the new law in amounts equal to or greater than what the new legislation requires can take credit for previously provided leave since January 1, 2022. It is important to note that this leave must be provided in addition to whatever leave the employee is entitled to under Labor Code Section 246.

10. **Restrictions**. Employers cannot require employees to use or exhaust any other type of leave before requesting COVID PSL.
11. **Tax Credits**. There are no direct tax credits or financial relief available to businesses, which will have to front the costs for COVID PSL. But businesses can expect some indirect relief through various new proposed tax credits and some additional funding for small business grants.

Sweeney Mason is closely tracking the proposed COVID PSL as it makes its way through the legislature, and we will provide updates as we learn more. We continue to recommend that employers track employee sick time for COVID-related reasons separately from regular paid sick leave use to make retroactive implementation easier.

For more information about any of these updates, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smwb.com or Rachael Brown at reb@smwb.com.



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

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