

Sonoma County Office of Education

2022 COVID-19

Supplemental Paid Sick Leave



February 2022

SB-114 and AB-84 COVID-19 Supplemental Paid Sick Leave

The existing law has been extended under the Healthy Families Act of 2014 effective February 19, 2022, retroactive to January 1, 2022 – September 30, 2022. Employers with more than 25 employees, must provide SPSL for all employees who are unable to work or telework for COVID related leaves.



This replaces the 2021 SPSL that ended 9/30/2021

The leaves must be tracked in two banks using ***Hours*** for both Certificated and Classified.

1. **Bank One:** Supplemental Paid Sick Leave for Qualifying Reasons – **40 hours**
2. **Bank Two:** Supplemental Paid Sick Leave based on Positive COVID-19 TEST- **40 hours**

See the School & College Legal Services of CA (SCLS) Legal Update dated February 11, 2022 and February 18, 2022 at the end of this guide.

SB-114 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB114

AB-84 https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB84

Notice Requirements

General Notice – The state labor department will publish a model poster that employers must display conspicuously in the workplace and provide (e.g., via email) a copy to employees who do not frequent the workplace.

Employee Notice of Leave Use

1. The employer must provide all employees with written notice that sets for the amount of SPSL and PT-SPSL they used through the pay period in which it was due to be paid.
2. The notice may be provided on an employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.
3. The employer must specify zero hours if the employee has not used any SPSL or PT-SPSL.
4. This notice requirement goes into effect the next full pay period (March, 2022) following the effective date of AB 84.

Please contact your District legal provider if you have questions on this matter.

Create Sick Leave Balances

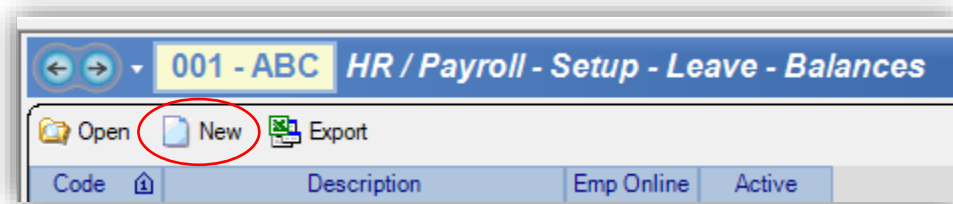
Recommended setup for the COVID Supplemental Paid Sick Leave (SPSL) in Escape. This setup will Grant and show SPSL balances on the employee's Paystub, provided the District has not already reached the max of 5 Leave Types.

- The district will need to adjust leaves taken for Covid-19 reasons after January 1, 2022 to the new SPSL Leave banks and credit Sick Leave or reverse Docked earnings.
- If the district is using the Frontline (AESOP) Absence Management system, we recommend to add the new SPSL to the Absence Reason dropdown in that system.

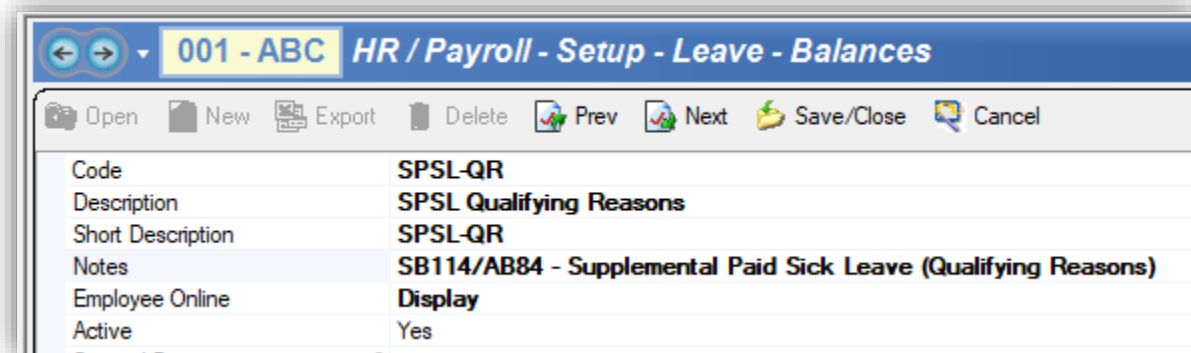
Go to HR/Payroll - Setup - Leave – Balances

Bank One Supplemental Paid Sick Leave – Qualifying Reasons

- Click New to Create Balance



- **Code:** Enter Code up to 8 characters
 - **Example:** SPSL-QR
- **Description:** Enter Code up to 30 characters
 - **Example:** SPSL Qualifying Reasons
- **Short Description:** Enter Code up to 15 characters
 - **Example:** SPSL-QR
- **Notes:** Enter more notes to help describe the Balance
- **Employee Online:** Choose Display or Hide in Employee Portal
- **Active:** Yes
- **Save/Close**



Go to HR/Payroll - Setup - Leave – Balances

Bank Two Supplemental Paid Sick Leave – Positive Test

- Click New to Create Balance

001 - ABC HR / Payroll - Setup - Leave - Balances	
Code	SPSL-PT
Description	SPSL Positive Test
Short Description	SPSL-PT
Notes	SB114/AB884 - Supplemental Sick Leave (Positive Test)
Employee Online	Display
Active	Yes

- **Code:** Enter Code up to 8 characters
 - **Example:** SPSL-PT
- **Description:** Enter Code up to 30 characters
 - **Example:** SPSL Positive Test
- **Short Description:** Enter Code up to 15 characters
 - **Example:** SPSL-PT
- **Notes:** Enter more notes to help describe the Balance
- **Employee Online:** Choose Display or Hide in Employee Portal
- **Active:** Yes
- **Save/Close**

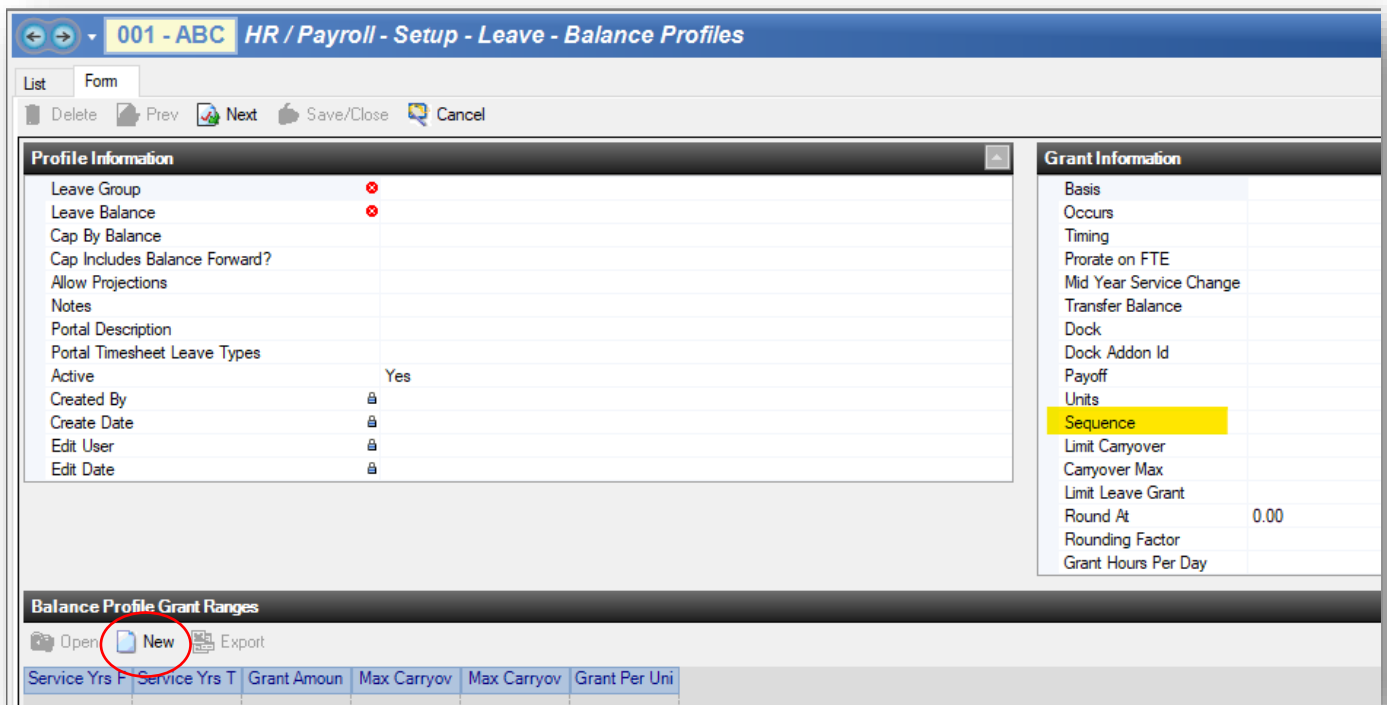
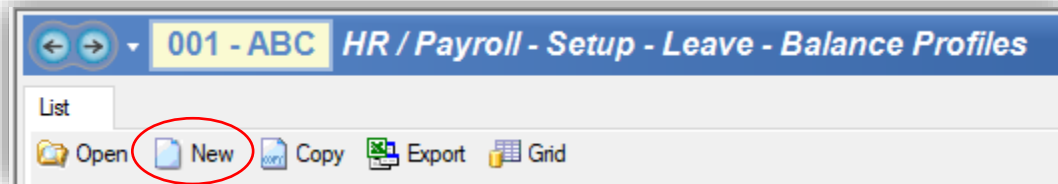


Create Balance Profiles

Leave Balance Profile records define rates and intervals for granting and rules for carryover.

A profile record is created for each balance within the group. For example, a leave group "class" may have three related leave balance profile records for vacation, sick and personal necessity; while a leave group "cert" might have only two related leave balance profile records for sick and personal necessity.

Go to HR/Payroll - Setup - Leave – Balance Profiles



Note: Escape allows **5** leave types to show on the paystub from the **Sequence** field. If your district already reached this limit, then you may need to adjust the sequence numbering logic **OR** provide the employees a separate document with this

HR/Payroll - Setup - Leave – Balance Profiles

Profile Information:

- **Leave Group:** Select Leave Group from dropdown menu
- **Leave Balance:** Select Leave Balance from dropdown menu
 - **Example:** SPSL-QR Qualifying Reasons
- **Notes:** Enter more notes to help describe the Balance Profile
- **Active:** Yes

Profile Information	
Leave Group	CERT {Certificated employees}
Leave Balance	SPSL-QR {SPSL Qualifying Reasons}
Cap By Balance	
Cap Includes Balance Forward?	
Allow Projections	
Notes	SB114/AB84 - Supplemental Paid Sick Leave for Qualifying Reasons
Portal Description	
Portal Timesheet Leave Types	
Active	Yes

Grant Information:

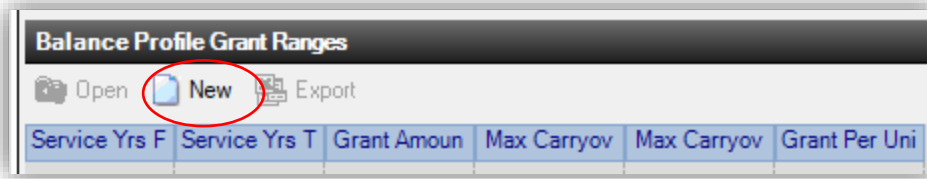
- **Basis:** Flat Amount
- **Occurs:** July for Entire Year
- **Timing:** Hour
- **Prorate on FTE:** Yes
- **Mid-Year Service Change:** 4 {No Change Based on Time Worked}
- **Sequence:** Enter number 1-5 to print on pay stub (*if not already used by another Leave Type*)
- **Limit Carryover:** No to carry forward to next fiscal; ends 9/30/2022

Grant Information	
Basis	Flat Amount
Occurs	July for Entire Year
Timing	Hour
Prorate on FTE	Yes
Mid Year Service Change	4 {No Change Based on Time Worked}
Transfer Balance	
Dock	
Dock Addon Id	
Payoff	
Units	
Sequence	
Limit Carryover	No
Carryover Max	
Limit Leave Grant	
Round At	0.00
Rounding Factor	
Grant Hours Per Day	

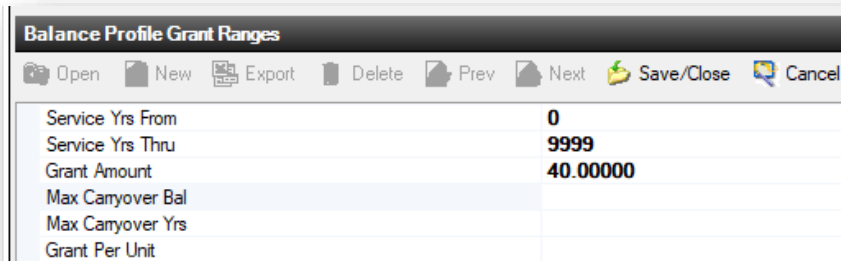
HR/Payroll - Setup - Leave – Balance Profiles

Balance Profile Grant Ranges:

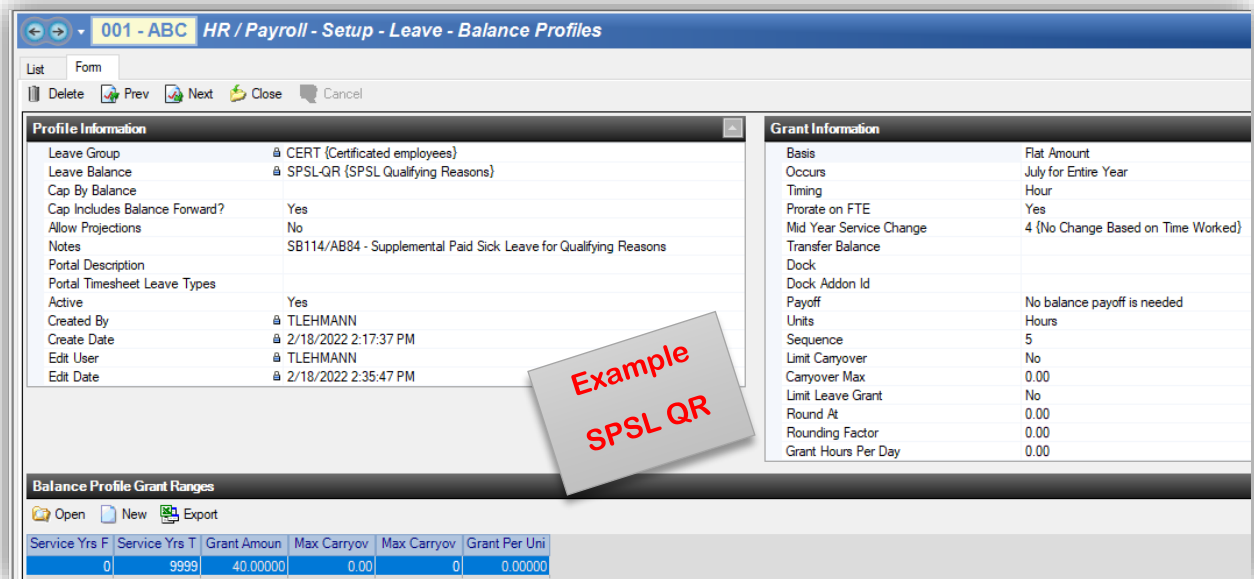
Within the Balance Profile setup determine if the District will Grant 40 hours (Prorated on FTE) or Grant 0.00 and let the balance go negative if used.



- Click New to add Ranges



- **Service Yrs From: 0**
- **Service Yrs Thru: 9999**
- **Grant Amount: 40.00 hours or enter 0.00 if not granting up front (Determined by District)**
- **Save/Close**



Profile Information

Leave Group	CLAS SY (Classified School Year)
Leave Balance	SPSL-PT (SPSL Positive Test)
Cap By Balance	
Cap Includes Balance Forward?	Yes
Allow Projections	No
Notes	SB114/AB84 - Supplemental Paid Sick LLeave for Positive Test
Portal Description	
Portal Timesheet Leave Types	
Active	Yes
Created By	TLEHMANN
Create Date	2/18/2022 2:26:33 PM
Edit User	TLEHMANN
Edit Date	2/18/2022 2:34:39 PM

Grant Information

Basis	Flat Amount
Occurs	July for Entire Year
Timing	Hour
Prorate on FTE	Yes
Mid Year Service Change	4 (No Change Based on Time Worked)
Transfer Balance	
Dock	
Dock Addon Id	
Payoff	No balance payoff is needed
Units	Hours
Sequence	4
Limit Carryover	No
Carryover Max	0.00
Limit Leave Grant	No
Round At	0.00
Rounding Factor	0.00
Grant Hours Per Day	0.00

Balance Profile Grant Ranges

Service Yrs F	Service Yrs T	Grant Amount	Max Carryov	Max Carryov	Grant Per Uni
0	9999	40.00000	0.00	0	0.00000

**Example
SPSL PT**

Leave Types

These records define which balances decrease when a leave of this type is taken. Create a new Leave Type for SPCL-QR and SPSL-PT.

Go to HR/Payroll - Setup - Leave – Types

- Click New to create a new type

HR / Payroll - Setup - Leave - Types

Open **New** Export

Code	Description	Bal Code	Alt Bal Code
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Code	SPSL-QR
Description	SPSL Qualifying Reasons
Short Description	SPCL-QR
Balance Code	SPSL-QR {SPSL Qualifying Reasons}
Alt Balance Code	
Alt Balance Code 2	
Profile Req'd	No
Location Access	No
Notes	SB114/AB84 - Supplemental Paid Leave (Quali
Active	Yes

- **Code:** Enter Code up to 8 characters
 - **Example:** SPSL-QR
- **Description:** Enter Code up to 30 characters
 - **Example:** SPSL Qualifying Reasons
- **Short Description:** Enter Code up to 15 characters
 - **Example:** SPSL-QR
- **Balance Code:** Select from drop down menu
- **Notes:** Enter Description
- **Save/Close**

001 - ABC HR / Payroll - Setup - Leave - Types	
Code	SPSL-PT
Description	SPSL Positive Test
Short Description	SPSL-PT
Balance Code	SPSL-PT {SPSL Positive Test}
Alt Balance Code	
Alt Balance Code 2	
Profile Req'd	No
Location Access	No
Notes	SB114/AB84 - Supplementa
Active	Yes



- **Code:** Enter Code up to 8 characters
 - **Example:** SPSL-PT
- **Description:** Enter Code up to 30 characters
 - **Example:** SPSL Positive Test
- **Short Description:** Enter Code up to 15 characters
 - **Example:** SPSL-PT
- **Balance Code:** Select from drop down menu
- **Notes:** Enter Description
- **Save/Close**

Leave Status

The Leave Status is where the Leave Grants take place. This process must be done prior to submitting end of month Payroll. Leaves can be granted multiple times during the month to capture Assignment Changes.

Go to HR/Payroll - Employment - Leave Status

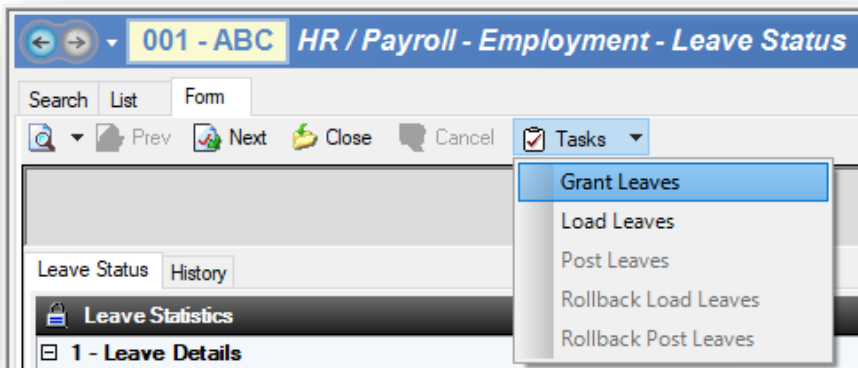
001 - ABC HR / Payroll - Employment - Leave Status	
Search	List
Go	Clear
★ Favorites	
Search Criteria - Search Pay Leave Status records	
From Leave Reporting End Date	2/15/2022 {BCM+14}
From Leave Reporting End Date	
Enter starting Reporting Period End Date value.	

Create a Default Favorite to view current and future Leave Reporting Periods using Mnemonics:

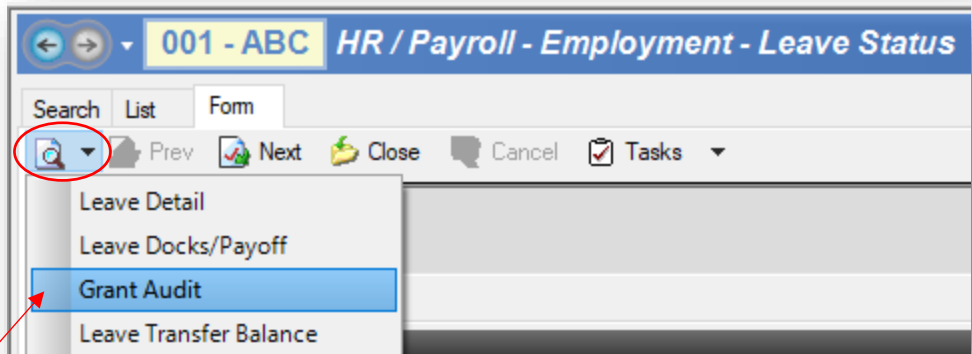
Enter BCM+14 for the 15th Begin of Current Month

Status	Leave Ending	Payroll Docks	Allow Negative	Payroll Payoffs	Deferred Payoff	Granted	Loaded	Posted	Active
Open	3/15/2022								No
Open	4/15/2022								No
Open	5/15/2022								No
Open	6/15/2022								No

- **Open** current "Open" status record



- **Go to Tasks** to select Grant Leaves
 - Click Yes to proceed with Grant



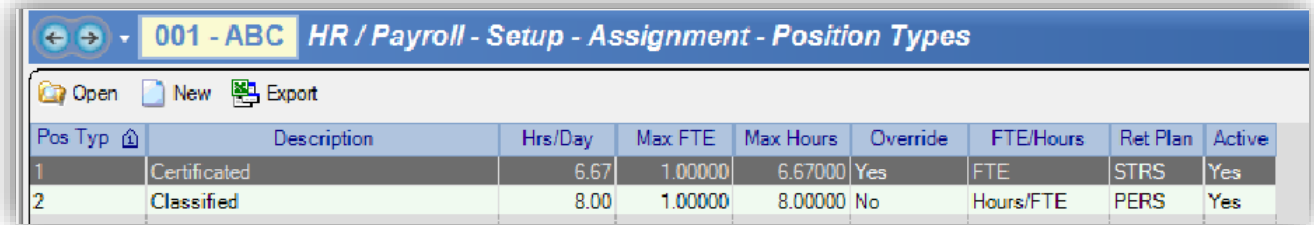
- **Go to snapshot** to review the Grant Audit to verify Leaves Granted as expected
- **Reopen Go to Tasks** to select Load Leaves
 - Click Yes to proceed
- **Reopen Go to Tasks** to select Post Leaves
 - Click Yes to Post

Note: 2022 SPSS Leave Banks are scheduled to end 9/30/2022; therefore, the balances must carryover to the next fiscal year starting 7/1/2022.

Leave Usage

Usage subtracts from an employee's leave balance. The usage will be tracked in hours for all employees. A full day is based on the hours per day in Position Types.

Go to HR/Payroll - Setup – Assignment – Position Types

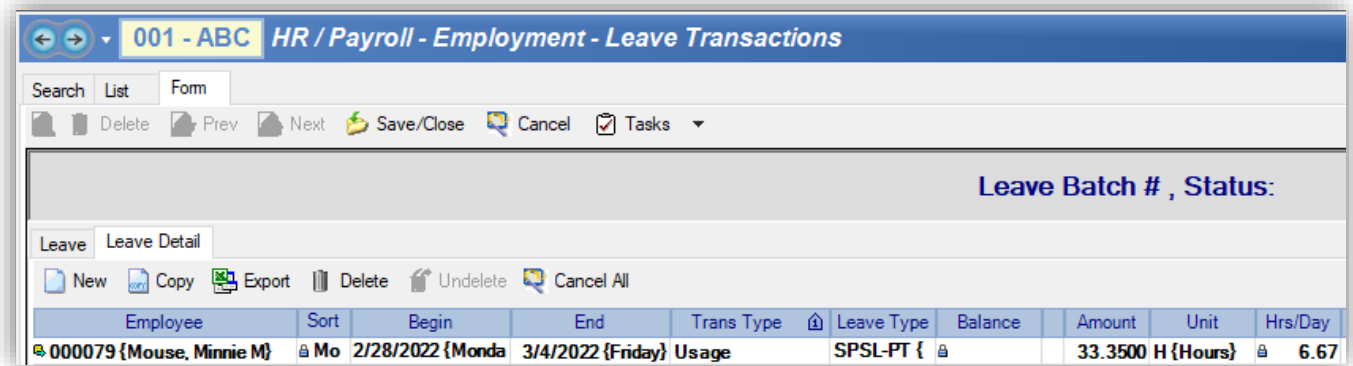


Pos Typ	Description	Hrs/Day	Max FTE	Max Hours	Override	FTE/Hours	Ret Plan	Active
1	Certificated	6.67	1.00000	6.67000	Yes	FTE	STRS	Yes
2	Classified	8.00	1.00000	8.00000	No	Hours/FTE	PERS	Yes

Leave Transactions

Leave usage can be posted in Leave transactions activity.

Go to HR/Payroll – Employment – Leave Transactions



Employee	Sort	Begin	End	Trans Type	Leave Type	Balance	Amount	Unit	Hrs/Day
000079 {Mouse, Minnie M}	Mo	2/28/2022 {Monda	3/4/2022 {Friday}	Usage	SPSL-PT {		33.3500 H {Hours}		6.67

Example: A 1.0 FTE Certificated Teacher is out on SPSL-PT for 5 days, each day is equivalent to 6.67 hours, total usage is 33.35 hours (5 days * 6.67 hours) leaving an available balance of 6.65 hours. The system will generate the hours based on the setup in the Position Types.



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LEGAL UPDATE

February 18, 2022

To: Superintendents, Member School Districts (K-12)

From: Nancy L. Klein, Senior Associate General Counsel

Subject: New 2022 “Supplemental Paid Sick Leave” for Qualifying
Reasons and Supplemental Paid Sick Leave based on Positive
COVID-19 Test **with Model POSTER**
Memo No. 08-2022 REVISED

Effective **February 19, 2022, to September 30, 2022**, **Labor Code section 248.6¹** requires employers with 26 or more employees to provide paid leave to employees who are *unable to work or telework* for specified reasons related to COVID-19 quarantine or isolation orders, vaccinations, symptoms, and positive tests, as described below.

Employees may make retroactive claims for paid leave based on one or more specified reasons between January 1, 2022, and February 18, 2022, inclusive.

Section 248.6 establishes two banks of leave: one for the same Qualifying Reasons (“QR”) that were in effect under the 2021 Supplemental Paid Sick Leave (“SPSL”) law and the second for employees unable to work or telework due to their own or a family member’s positive COVID-19 test. Employers may require an employee to provide documentation to substantiate the employee or family member’s positive test results, or symptoms related to a vaccination or booster, if symptoms persist in excess of three days.

As with 2021 SPSL, employees taking leave pursuant to **Section 248.6** on September 30, 2022, are entitled to take the remainder of the full amount of leave for which they qualify, notwithstanding the expiration of **Section 248.6**.

I. BANK ONE: SUPPLEMENTAL PAID SICK LEAVE for QUALIFYING REASONS

¹ Future references will be to the Labor Code section.



From February 19, 2022, to September 30, 2022, employers with more than 25 employees must provide SPSL for an *employee who is unable to work or telework* for any of the following Qualifying Reasons (“QR”):

1. Employee is subject to a quarantine or isolation period related to COVID-19 as defined by the California Department of Public Health (CDPH), federal Center for Disease Control (CDC) or a local health officer with jurisdiction over the workplace.²
2. Employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
3. Employee is attending an appointment for the employee or a “family member”³ to receive a COVID-19 vaccine or a vaccine booster that prevents the employee from being able to work or telework.
4. Employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

Note: An employer may limit the total SPSL taken for this QR to three (3) days unless the employee provides verification from a health care provider that the employee or family member is continuing to experience symptoms related to the vaccine or booster. The three-day period includes the time used pursuant to QR 3 to attend an appointment for a COVID-19 vaccine or booster.

5. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. Employee is caring for a family member who is subject to an order or guidance described in QR 1 or has been advised to isolate or quarantine as described in QR 2.
7. Employee is caring for a child⁴ whose school, place of care is closed or otherwise unavailable for reasons related to COVID-19 *on the premises*.

Upon written or oral request, an employer must make SPSL available for immediate use.

Note that employees who utilized their maximum amount of leave under the 2021 SPSL are eligible for this leave, as long as they qualify.

² The California Department of Industrial Relations clarified in relation to 2021 SPSL that the “order or guidelines must be specific to the covered employee’s circumstances. A general stay-at-home order would not count.” [DIR FAQs](https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html) (<https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>)

³ “**Family member**” means any of the following:

(1) A **child**, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(Lab. C. 245.5(c), 248.2(b)((1)(F) – Healthy Families Healthy Workplaces Act Definitions)

⁴ See f.n. 1, paragraph 1. “Child” is not restricted by age or require that a child over 18 be incapable of self-care.



II. BANK TWO: SUPPLEMENTAL PAID SICK LEAVE BASED ON POSITIVE COVID-19 TEST (“PT-SPSL”)

A. From February 19, 2022, to September 30, 2022, employers with more than 25 employees must provide paid leave for an employee who is *unable to work or telework* for either of the following Positive Test Qualifying Reasons (“PT-QR”):

1. The employee tests positive for COVID-19, or
2. The employee’s “family member” for whom the employee is providing care tests positive for COVID-19.

An employer’s obligation to provide PT-SPSL is subject to documentation of testing as specified in Section II.B., below.

B. Documentation to Support PT-SPSL Claims

1. **Employee:**

Positive Test: An employer may require an employee to provide documentation of the employee’s positive test result. An employer is not required to provide PT-SPSL if the employee refuses to provide such documentation.

Note: An employer may also require the employee to (a) submit to a diagnostic test on or after the fifth day after the employee initially tested positive and (b) provide documentation of the diagnostic test results. Employer must make the diagnostic test available at no cost to the employee.

2. **Family Member:** If an employee requests PT-SPSL based on a family member’s positive test, employer may require the employee to provide documentation of the positive test results *before paying the additional leave.*

3. **Retroactive Claims:** Employees may request retroactive PT-SPSL for leave taken between January 1, 2022 and February 18, 2022. An employer may require an employee to provide documentation of a positive COVID-19 test during the relevant period for retroactive PT-SPSL and SPSL claims.

C. Exhaustion of SPSL is not required to qualify for PT-SPSL

Employees are not required to exhaust SPSL to qualify for PT-SPSL. The right use to PT-SPSL is based on the occurrence of a PT-QR and subject to documentation of a positive COVID-19 test.

III. RATE OF PAY and RETROACTIVE PAYMENTS

A. For Non-Exempt Employees



1. For employees who work a regular schedule; the employee's regular rate of pay for the week in which employee used SPSL or PT- SPSL, or
2. For employees who work at variable hours and/or variable rates; divide the employee's total wages (excluding OT pay) by the employee's total non-overtime hours worked in the full pay periods occurring within the prior 90 days of employment.

B. For Exempt Employees

Calculate SPSL and PT-SPSL compensation in the same manner as employer calculates wages for other forms of paid leave.

C. Compensation Cap for SPSL and PT- SPSL

1. Employers are not required to pay more than \$511/day or \$5,110 total for both SPSL and PT-SPSL.
2. An employee who has reached the compensation cap may elect to use other available paid leave to receive full compensation.

D. Retroactive SPSL and PT-SPSL Claims

1. Upon the oral or written request of an employee, employer must provide retroactive payment for SPSL / PT- SPSL on or before the payday for the next full pay period, or provide credit for other leave taken by the employee for a QR or PT-QR.
2. An employer may require an employee to provide documentation of a positive COVID-19 test during the relevant period for retroactive SPSL and PT-SPSL claims. See Sections II.B.1. and II.B.2., above.

IV. LEAVE ENTITLEMENTS / MAXIMUM ENTITLEMENT

Covered employees are eligible for one bank of hours for SPSL and a separate bank of hours for PT-SPSL. The maximum is a total of 40 hours of SPSL and 40 hours for PT-SPSL. An employee's specific entitlement is determined by employee's full-time or part-time status as described below.

A. For Full-Time Employees:

Forty (40) hours, if either: (1) the employer considers the employee to work full time, or (2) the employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the employee took leave.

B. For Part-Time Employees:

1. For a part-time employee with a "normal weekly schedule", the total number of hours the employee is normally scheduled to work in one week.
2. For a part-time employee with a "Variable Schedule of Hours" who has been:



- a. *Employed at least six months*, seven times the average number of hours the employee worked each day in the six months preceding the date the employee took leave for a QR or PT-QR;
- b. *Employed less than six months but more than seven days*, seven times the average number of hours the employee worked over the entire period of employment,
- c. *Employed seven or fewer days*, the total number of hours the employee has worked for the employer.

C. Right to Use SPSL and PT-SPSL

1. An employee may determine how many hours of SPSL or PT- SPSL to use up to the maximum entitlement.
2. An employer “shall...make [SPSL] available for immediate use..., upon the oral or written request of the ...employee to the employer.”
3. Payment for PT-SPSL is subject to documentation if requested by employer. (See Section II.B.)

D. Offset

If the employer made another supplemental benefit for leave taken on or after January 1, 2022 with compensation at least equal to what is required under **Section 248.6**, for any of the QRs and PT-QRs, the employer may count those hours toward the employee’s leave entitlement under **Section 248.6**. See Section IV.

Note, some schools entered into memoranda of understanding with their labor units extending the 2021 SPSL; this may qualify as an “offset” for the 2022 SPSL and PT-SPSL, if it was in effect on or after January 1, 2022, and provided compensation at least equal to what is set forth above. We encourage clients to contact legal counsel to discuss this further.

E. Interaction with other Available Leave

1. Exclusion Pay: SPSL and PT- SPSL does not limit an employer’s obligation to provide Exclusion Pay under the Emergency Temporary Standards (Title 8-ETS) when an employee contracts COVID-19 or has a workplace close contact.
2. Paid Sick Days: SPSL and PT- SPSL are in addition to an employee’s rights to Paid Sick Days under the Healthy Workplaces, Healthy Families Act.
3. An employer cannot require an employee to use other paid leave, including Paid Sick Days and Exclusion Pay, for a QR or PT-QR prior to using SPSL or PT- SPSL.



V. NOTICE REQUIREMENTS

A. General Notice – The state model notice is attached. Employers should display the notice conspicuously in the workplace and provide a copy to employees who do not frequent the workplace. Delivery by email is permissible.

B. Employee Notice of Leave Use

1. The employer must provide all employees with written notice that sets for the amount of SPSL and PT-SPSL they used through the pay period in which it was due to be paid.
2. The notice may be provided on an employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.
3. The employer must specify zero hours if the employee has not used any SPSL or PT-SPSL.
4. This notice requirement goes into effect the next full pay period (March, 2022) following the effective date of **Section 248.6**.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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2022 COVID-19 Supplemental Paid Sick Leave

Effective February 19, 2022



Covered employees in the public or private sectors who work for employers with 26 or more employees are entitled to up to 80 hours of 2022 COVID-19 related paid sick leave from January 1, 2022 through September 30, 2022, immediately upon an oral or written request to their employer, with up to 40 of those hours available only when an employee or family member tests positive for COVID-19.

A full-time covered employee may take up to 40 hours of leave 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 covered 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.

Part-Time covered Employees: Part-time covered employees may take as leave up to the amount of hours they work over two weeks, with half of those hours available only when they or a family member* test positive for COVID-19.

Payment: If an employee took leave for one of the reasons identified above between January 1, 2022 and February 19, 2022, and that leave was either unpaid or compensated at a rate less than the employee's regular rate of pay, the employee may also request a retroactive payment. Payment is at the employee's regular or usual rate of pay, not to exceed \$511 per day and \$5,110 in total.

Retaliation or discrimination against a covered employee requesting or using COVID-19 supplemental paid sick leave is strictly prohibited. A covered employee who experiences such retaliation or discrimination can file a claim with the Labor Commissioner's Office. Locate the nearest district office by looking at the [directory on our website](http://www.dir.ca.gov/dlse/DistrictOffices.htm) <http://www.dir.ca.gov/dlse/DistrictOffices.htm> using the alphabetical listing of cities, locations, and communities or by calling 1-833-526-4636.

This poster must be displayed where employees can easily read it. If employees do not frequent a physical workplace, it may be disseminated to employees electronically.



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LEGAL UPDATE

February 11, 2022

To: Superintendents, Member School Districts (K-12)

From: Nancy L. Klein, Senior Associate General Counsel

**Subject: New 2022 “Supplemental Paid Sick Leave” for Qualifying
Reasons and Supplemental Paid Sick Leave based on Positive
COVID-19 Test
Memo No. 08-2022**

Effective **February 19, 2022, to September 30, 2022**, Assembly Bill 84 (“AB 84”) requires employers with 26 or more employees to provide paid leave to employees who are *unable to work or telework* for specified reasons related to COVID-19 quarantine or isolation orders, vaccinations, symptoms, and positive tests, as described below.

Employees may make retroactive claims for paid leave based on one or more specified reasons between January 1, 2022, and February 18, 2022, inclusive.

AB 84 establishes two banks of leave: one for the same Qualifying Reasons (“QR”) that were in effect under the 2021 Supplemental Paid Sick Leave (“SPSL”) law and the second for employees unable to work or telework due to their own or a family member’s positive COVID-19 test. Employers may require an employee to provide documentation to substantiate the employee or family member’s positive test results, or symptoms related to a vaccination or booster, if symptoms persist in excess of three days.

As with 2021 SPSL, employees taking leave pursuant to AB 84 on September 30, 2022, are entitled to take the remainder of the full amount of leave for which they qualify, notwithstanding the expiration of AB 84.

I. BANK ONE: SUPPLEMENTAL PAID SICK LEAVE for QUALIFYING REASONS

From February 19, 2022, to September 30, 2022, employers with more than 25



employees must provide SPSL for an *employee who is unable to work or telework* for any of the following Qualifying Reasons (“QR”):

1. Employee is subject to a quarantine or isolation period related to COVID-19 as defined by the California Department of Public Health (CDPH), federal Center for Disease Control (CDC) or a local health officer with jurisdiction over the workplace.¹
2. Employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
3. Employee is attending an appointment for the employee or a “family member”² to receive a COVID-19 vaccine or a vaccine booster that prevents the employee from being able to work or telework.
4. Employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

Note: An employer may limit the total SPSL taken for this QR to three (3) days unless the employee provides verification from a health care provider that the employee or family member is continuing to experience symptoms related to the vaccine or booster. The three-day period includes the time used pursuant to QR 3 to attend an appointment for a COVID-19 vaccine or booster.

5. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
6. Employee is caring for a family member who is subject to an order or guidance described in QR 1 or has been advised to isolate or quarantine as described in QR 2.
7. Employee is caring for a child³ whose school, place of care is closed or otherwise unavailable for reasons related to COVID-19 *on the premises*.

Upon written or oral request, an employer must make SPSL available for immediate use.

Note that employees who utilized their maximum amount of leave under the 2021 SPSL are eligible for this leave, as long as they qualify.

¹ The California Department of Industrial Relations clarified in relation to 2021 SPSL that the “order or guidelines must be specific to the covered employee’s circumstances. A general stay-at-home order would not count.” [DIR FAQs](https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html) (https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html)

² “**Family member**” means any of the following:

(1) A **child**, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.

(3) A spouse.

(4) A registered domestic partner.

(5) A grandparent.

(6) A grandchild.

(7) A sibling.

(Lab. C. 245.5(c), 248.2(b)((1)(F) – Healthy Families Healthy Workplaces Act Definitions)

³ See f.n. 1, paragraph 1. “Child” is not restricted by age or require that a child over 18 be incapable of self-care.



II. BANK TWO: SUPPLEMENTAL PAID SICK LEAVE BASED ON POSITIVE COVID-19 TEST (“PT-SPSL”)

A. From February 19, 2022, to September 30, 2022, employers with more than 25 employees must provide paid leave for an employee who is *unable to work or telework* for either of the following Positive Test Qualifying Reasons (“PT-QR”):

1. The employee tests positive for COVID-19, or
2. The employee’s “family member” for whom the employee is providing care tests positive for COVID-19.

An employer’s obligation to provide PT-SPSL is subject to documentation of testing as specified in Section II.B., below.

B. Documentation to Support PT-SPSL Claims

1. **Employee:**

Positive Test: An employer may require an employee to provide documentation of the employee’s positive test result. An employer is not required to provide PT-SPSL if the employee refuses to provide such documentation.

Note: An employer may also require the employee to (a) submit to a diagnostic test on or after the fifth day after the employee initially tested positive and (b) provide documentation of the diagnostic test results. Employer must make the diagnostic test available at no cost to the employee.

2. **Family Member:** If an employee requests PT-SPSL based on a family member’s positive test, employer may require the employee to provide documentation of the positive test results *before paying the additional leave.*

3. **Retroactive Claims:** Employees may request retroactive PT-SPSL for leave taken between January 1, 2022 and February 18, 2022. An employer may require an employee to provide documentation of a positive COVID-19 test during the relevant period for retroactive PT-SPSL and SPSL claims.

C. Exhaustion of SPSL is not required to qualify for PT-SPSL

Employees are not required to exhaust SPSL to qualify for PT-SPSL. The right use to PT-SPSL is based on the occurrence of a PT-QR and subject to documentation of a positive COVID-19 test.



III. RATE OF PAY and RETROACTIVE PAYMENTS

A. For Non-Exempt Employees

1. For employees who work a regular schedule; the employee's regular rate of pay for the week in which employee used SPSL or PT- SPSL, or
2. For employees who work at variable hours and/or variable rates; divide the employee's total wages (excluding OT pay) by the employee's total non-overtime hours worked in the full pay periods occurring within the prior 90 days of employment.

B. For Exempt Employees

Calculate SPSL and PT-SPSL compensation in the same manner as employer calculates wages for other forms of paid leave.

C. Compensation Cap for SPSL and PT- SPSL

1. Employers are not required to pay more than \$511/day or \$5,110 total for both SPSL and PT-SPSL.
2. An employee who has reached the compensation cap may elect to use other available paid leave to receive full compensation.

D. Retroactive SPSL and PT-SPSL Claims

1. Upon the oral or written request of an employee, employer must provide retroactive payment for SPSL / PT- SPSL on or before the payday for the next full pay period, or provide credit for other leave taken by the employee for a QR or PT-QR.
2. An employer may require an employee to provide documentation of a positive COVID-19 test during the relevant period for retroactive SPSL and PT-SPSL claims. See Sections II.B.1. and II.B.2., above.

IV. LEAVE ENTITLEMENTS / MAXIMUM ENTITLEMENT

Covered employees are eligible for one bank of hours for SPSL and a separate bank of hours for PT-SPSL. The maximum is a total of 40 hours of SPSL and 40 hours for PT-SPSL. An employee's specific entitlement is determined by employee's full-time or part-time status as described below.

A. For Full-Time Employees:

Forty (40) hours, if either: (1) the employer considers the employee to work full time, or (2) the employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the employee took leave.



B. For Part-Time Employees:

1. For a part-time employee with a “normal weekly schedule”, the total number of hours the employee is normally scheduled to work in one week.
2. For a part-time employee with a “Variable Schedule of Hours” who has been:
 - a. *Employed at least six months*, seven times the average number of hours the employee worked each day in the six months preceding the date the employee took leave for a QR or PT-QR;
 - b. *Employed less than six months but more than seven days*, seven times the average number of hours the employee worked over the entire period of employment,
 - c. *Employed seven or fewer days*, the total number of hours the employee has worked for the employer.

C. Right to Use SPSL and PT-SPSL

1. An employee may determine how many hours of SPSL or PT- SPSL to use up to the maximum entitlement.
2. An employer “shall...make [SPSL] available for immediate use..., upon the oral or written request of the ...employee to the employer.”
3. Payment for PT-SPSL is subject to documentation if requested by employer. (See Section II.B.)

D. Offset

If the employer made another supplemental benefit for leave taken on or after January 1, 2022 with compensation at least equal to what is required under AB 84, for any of the QRs or PT-QRs, the employer may count those hours toward the employee’s leave entitlement under AB 84. See Section IV.

Note, some schools entered into memoranda of understanding with their labor units extending the 2021 SPSL; this may qualify as an “offset” for the 2022 SPSL and PT-SPSL, if it was in effect on or after January 1, 2022, and provided compensation at least equal to what is set forth above. We encourage clients to contact legal counsel to discuss this further.

E. Interaction with other Available Leave

1. Exclusion Pay: SPSL and PT- SPSL does not limit an employer’s obligation to provide Exclusion Pay under the Emergency Temporary Standards (Title 8-ETS) when an employee contracts COVID-19 or has a workplace close contact.
2. Paid Sick Days: SPSL and PT- SPSL are in addition to an employee’s rights to Paid Sick Days under the Healthy Workplaces, Healthy Families Act.
3. An employer cannot require an employee to use other paid leave, including Paid Sick Days and Exclusion Pay, for a QR or PT-QR prior to using SPSL or PT- SPSL.



V. NOTICE REQUIREMENTS

A. General Notice – The state labor department will publish a model poster that employers must display conspicuously in the workplace and provide (e.g., via email) a copy to employees who do not frequent the workplace.

B. Employee Notice of Leave Use

1. The employer must provide all employees with written notice that sets for the amount of SPSL and PT-SPSL they used through the pay period in which it was due to be paid.
2. The notice may be provided on an employee's itemized wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.
3. The employer must specify zero hours if the employee has not used any SPSL or PT-SPSL.
4. This notice requirement goes into effect the next full pay period (March, 2022) following the effective date of AB 84.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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