
On February 9, 2022, Governor Newsom signed Senate Bill 114 (“SB 114”), which requires employers that employ more than 25 employees to provide California employees with paid sick time for COVID-19 related absences.

Below is a summary of SB 114, which will be codified under California Labor Code Section 248.6.

When does SB 114 take effect?

The effective date of SB 114 is February 19, 2022. However, it applies retroactively beginning January 1, 2022 and expires on September 30, 2022.

Which employers does it apply to?

SB 114 applies to employers with 26 or more employees.

Do employers have to provide benefits in addition to wages when employees are paid under SB 114?

There is no requirement under SB 114 to provide benefits (health and welfare, retirement, etc.) in addition to the maximum wage payouts required to be paid to employees taking leave pursuant to SB 114.

What are the maximum payouts employers are required to make to employees?

Employers are required to pay up to \$511 per day and \$5,110 in the aggregate to a covered employee under SB 114 *unless* federal legislation is enacted that increases these amounts beyond those included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127). If available, employees may also choose to use other paid leave to fully compensate the employee for leave taken.

Can an employer require an employee to use other types of leave before paying them under SB 114?

No, an employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

How many times can employees be covered and paid under SB 114?

SB 114 provides up to 40 hours of leave for each of two distinct and different categories of qualifying reasons for COVID-19 leave, with a total maximum of 80 hours for the two combined categories of leave.

What are the 2 categories of qualifying reasons employees can use paid leave under SB 114?

- Category 1: Covid-19 Qualifying Reasons
 - Employee is subject to a quarantine or isolation period related to COVID-19 as defined by federal, state, or local orders or guidance.
 - Employee is advised by a health care provider to self-quarantine or isolate due to concerns related to COVID-19.
 - Employee or family member is attending an appointment to receive a COVID-19 vaccine or booster (*employer can limit to up to 3 days or 24 hours total for each vaccine/booster).
 - Employee or family member is experiencing symptoms related to a COVID-19 vaccine or booster that prevent the employee from being able to work or telework (*employer can limit to up to 3 days or 24 hours total for each vaccine/booster).
 - Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
 - Employee is caring for a family member who is subject to a quarantine or isolation order or guidance or who has been advised to self-quarantine or isolate by a health care provider due to concerns related to COVID-19.
 - 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.
- Category 2: Testing positive for COVID-19
 - The employee tests positive for COVID-19.
 - The employee's family member tests positive for COVID-19, *and* the employee is providing care for the family member due to the positive test result.

How do employers calculate the employees' rate of pay under SB 114?

For Full-Time Employees: Employees receive 40 hours (for each category above) if either their employer considers them to work full time or, on average, they worked or were scheduled to work at least 40 hours per week in the two weeks preceding the date they took leave.

For Non-Full-Time Employees: Employees with a normal weekly schedule receive the total number of hours they are normally scheduled to work over one week (for each category above). Employees who work a variable number of hours and whose tenure is six months or more receive seven times the average number of hours they worked each day in the six months preceding their leave date (for each category above). If they have worked only between 8 days and six months, employers are to use this same calculation but over the employee's entire period of employment. Employees who have worked 7 days or fewer receive leave hours equal to their total number of hours worked (for each category above).

How does SB 114 retroactively apply to COVID-19 related leave taken between January 1, 2022 through the effective date of SB 114?

If an employee was given paid time off equal to or greater than the amount provided by SB 114 between January 1, 2022 through the effective date of SB 114, the employer should credit those hours back to the employee's leave banks. This means that in situations when the employer paid

an amount equal to or greater than what SB 114 requires, if an employee requests that SB 114 paid leave be applied to the prior absence, the employer must apply (or “credit”) SB 114 leave to that absence, rather than using the other benefit that was applied to the absence.

If an employee was not provided paid leave or compensated at a pay rate lower than what SB 114 requires, and the employee took leave for a COVID-19 qualified reason between January 1, 2022 through the effective date of SB 114, the employer must true-up (*i.e.*, increase retroactively) the pay to what is required under SB 114. If a payment is made due to an employee’s oral or written request for retroactive payment, such payment must be made on or before the payday for the next full pay period after the request.

Can employers require employees to use leave under SB 114 due to a close contact or contraction of COVID 19 in the workplace?

No, an employer may not require an employee to use their leave entitlement under SB 114 when the employee is excluded from work due to a close contact or contraction of COVID-19 in the workplace. Exclusion Pay provided by Cal/OSHA’s Emergency Temporary Standard (ETS) is a separate entitlement.

Is there any tax or financial relief available to employers?

There is no direct tax or financial relief to employers for providing leave under SB 114.

Are there any differences in SB 114 from the paid sick leave law in 2021?

Another new provision provides that, when an employee or family member tests positive for COVID-19, employers can require employees to take another diagnostic test on or after the fifth day after the first test and provide documentation of the results. Importantly, in such a circumstance, an employer must make the test available at no cost to the employee.