



Claudell, It's a great day to be a California employer!

The gif has nothing to do with anything but it makes me smile, I hope it brought a smile to your face too Claudell, if it did we are both dating ourselves :)

If you have 25 employees or less stop reading, go grab a cup of java and rejoice that you dodged a bullet. You may want to consider having a blurb policy stating you do not have more than 26 employees and are not required nor do you choose to offer SPSL. Just saying...

For those of you with 26 or more employees, grab a martini..JK.

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Federal vs. State Law
Exclusion Pay and SPSL
Retroactive Pay
Notice Requirements
CFRA/FMLA and other leaves
Tax Credits

Federal vs. State Law

I have heard from employers and have come to the conclusion there may be a misunderstanding about the recent Supreme Court decision to put a halt to OSHA's recent attempt to implement across the board COVID requirements.

OSHA is a federal agency that the court decision states **DOES NOT** have the authority to boss around 50 states when it comes to certain COVID-related issues, like vaccinations. While the fate is still unknown for the federal plans, individual states can and do mandate certain requirements under their state OSHA COVID programs.

This brings us to CAL/OSHA and [exclusion pay](#). Exclusion pay is up to 10 days of the employee's regular pay for positive COVID tests that the employer investigation can not definitively support the exposure **WAS NOT** work-related. **ONLY** employees who test positive for COVID are entitled to exclusion pay. You can not use exclusion pay to care for another. There is a presumption that if an employee worked at an employer site within 14 days prior to testing positive the exposure to COVID is work-related.

In addition, the ETS requires employers to "exclude from work" any employee who has been identified as a potential [close contact](#), during the high-risk exposure period. Employers do not need to exclude asymptomatic employees in [certain situations](#)

Now on to exclusion pay and COVID Supplemental Paid Sick Leave (SPSL) or [AB 84](#). This law becomes effective 10 days from when

the governor signs the bill. It is sitting on his desk.

EXCLUSION PAY and SPSL

IN 2021 when the SPSL was first introduced employers were allowed to require employees to use this time before they could receive exclusion pay.

Under AB 84 employers are no longer allowed to require employees to first use and exhaust their SPSL during periods the employee is otherwise entitled to exclusion pay.

The law states *"An employer shall not require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section before satisfying any requirement to provide paid leave for reasons related to COVID-19 under any Cal-OSHA COVID-19 [Emergency Temporary Standards](#)."*

This means it is conceivable employees could receive up to 160 hours of paid protected leave. 80 hours for exclusion pay and another 80 hours from buckets 1 and 2 under SPSL.

RETROACTIVE PAY

AB 84 is retroactive to 1/1/2022, any employee who took leave for a COVID-related reason as listed in the 2/7/22 GCG newsletter and was **UNPAID OR** not paid in accordance with AB 84, will be entitled to back pay.

The employee may request the pay either verbally or in writing.

What is different is that when the employee asks for retroactive pay, the employers may request proof of the positive test from the employee for their own COVID illness **OR** the positive test for the family member.

NOTICE REQUIREMENTS

The Labor Commission will create a model notice within seven (7) days of the enactment of the law. This notice must be posted in a conspicuous place unless the workforce is remote, in which case the employer may provide the notice electronically.

Yes, you have to tell employees..that's another question I keep getting asked.

CFRA AND FMLA - OTHER LEAVES

Don't forget to determine if the employee is also entitled to any protected leave that could run concurrently with COVID. This includes but is not limited to [school leaves](#), CFRA, and FMLA.

TAX CREDITS

Unlike the FFCRA from the federal government, there are no direct tax credits associated with SPSL. The referenced tax credits are not directly tied to SPSL nor do they provide "dollar for dollar" reimbursement.

Have fun out there Claudell,



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