

"COMPLIANCE SHOULDN'T BE A FANTASY"



**I'M SORRY BUT I CAN'T
COME IN TODAY... I'M SICK**



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

When conducting internal investigations I ask the employee to agree with me that what we will talk about may make them uncomfortable, I say that because the topic conversation under investigation makes me uncomfortable. I tell you this because AB 84 frustrates me. I do not know as a small business owner how many more government-initiated financial hits we can take. I am hopeful if we can agree that I am very frustrated while writing this, you will be able to better tolerate my potential sarcasm.

AB84 applies to all employers with 26 or more employees and will remain in effect until September 30, 2022, unless it is extended. Employees who are out for COVID on September 30, are entitled to their full amount of paid leave.

Like the 2021 COVID Supplemental Sick Leave employees who work seven days or more are entitled to up to 80 hours. The difference is the time off is separated into two (2) buckets of 40 hours each.

I know this is a lot of information, so I have divided it into two (2) newsletters, this one is specifically about the amount of time and why an employee can take COVID Supplemental Sick Leave, and the next one will talk about retroactive pay and how this craziness interacts with CAL-OSHA exclusion pay, other leaves, and considerations. If you read no further please take this under advisement **YOU NEED A POLICY!**

BUCKET 1 - 40 hours - there is a myriad of COVID-related reasons for me to be able to take this time off with pay which includes..sing it with me people.

1) Quarantine by the CDPH or any other alphabet agency so duly authorized to isolate humans from other humans.

2) A Healthcare provider tells me to stay home

3) I am attending an appointment for myself or a family member to receive a vaccine or a vaccine booster for protection against COVID-19.

4) I am experiencing symptoms or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevents me from being able to work or telework.

5) I am experiencing symptoms of COVID-19 and seeking a medical diagnosis. *(note I can't just call in and say I have symptoms I **MUST** seek a medical diagnosis which means testing at the very least and submitting that documentation to my employer in a timely manner)*

6) I am caring for a family member who is subject to an order or guidance or who has been advised to isolate or quarantine, as described in bullets 1 & 2.

7) I am caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

On the bright side, you can in your policy limit the total time off available to me for vaccination or boosters to 3 days or 24 hours. If I want more time you can (again it's all about the policy) require I provide written verification from a healthcare provider that I **OR** my family member are continuing to experience symptoms related to COVID-19.

But the State of California giveth then taketh away because the 3 days or 24 hours applies to each vaccine or vaccine booster but does include time used to obtain the vaccine or booster.

A family member is defined under [Labor Code Section 245.5](#) as:

- A child, 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.
- 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.
- A spouse.
- A registered domestic partner.
- A grandparent.
- A grandchild.
- A sibling.

Notice the family member list **DOES** include Parent in-law (bullet 2) which was added this year to CFRA and Paid Family Leave (short term disability), but it **DOES NOT** include aunts, uncles, nephews cousins..I am sure you are picking up what I am putting down here. Take the win where you can.

BUCKET 2 - I or my family member for whom I am caring for test positive for COVID...another 40 hours potentially. The reason I say potentially is that part-time or on-call employees get a prorated amount of COVID Supplemental Paid Sick leave for both buckets. The number is the same in both buckets but it could be less than 40 hours.

On a surprise move, at least I was surprised, AB 84 **DOES** authorize employers to require proof of a positive test, even for the family member. That is very different from the 2021 sick leave. But unlike CFRA it **does not** require a medical certification that states I am the only person who can care for the family member who tests positive.

It's all about the policy, your policy should state that a positive test from an authorized testing site is required, for both the employee and the family member and you **DO NOT** accept home tests.

For this bucket, your policy should also state that on the 5th day after collection of the 1st specimen the employee is required to submit to another diagnostic test **AND** provide proof of testing and the results to the employer immediately. Failure of the employee to provide this documentation may result in denial or delayed payment.

If under this bucket I am asking for additional leave to care for my family member the policy should state I must submit documentation of that family member's positive test before I will be paid.

The law specifically states an *“employer has no obligation to provide additional COVID-19 supplemental paid sick leave...for an employee who refuses to provide documentation of the results of the test...upon the request of the employer.”*

Have fun out there and stay safe Claudell,..be on the lookout for the final newsletter tying up the loose ends of this law later today.



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