

# COVID-19 Supplemental Paid Sick Leave (SB 114)

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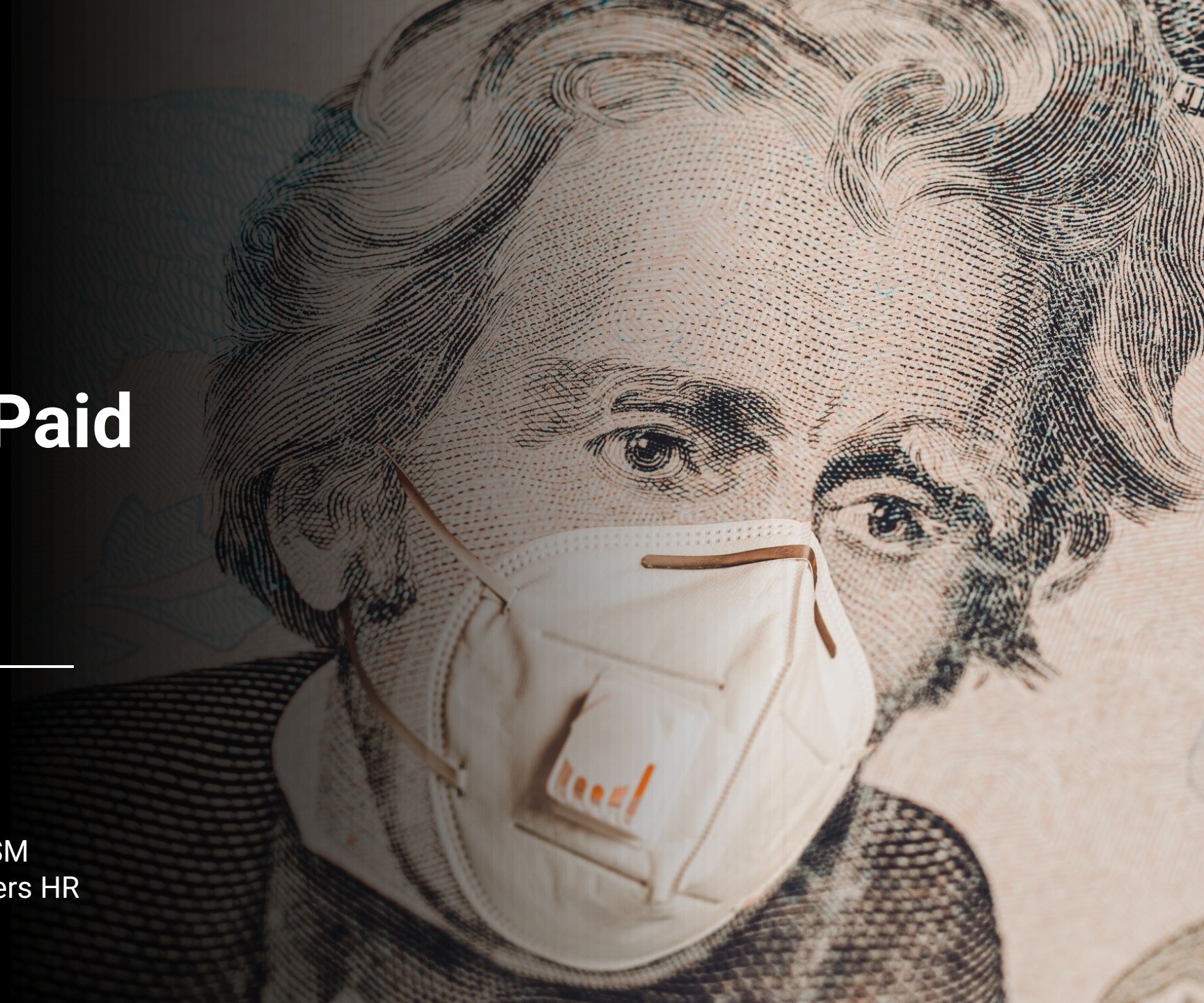
February 17, 2022

Webinar: 9:00 – 10:00AM

Hosted by:

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# PRESENTERS



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# Presentation Housekeeping



California  
Centric



COVID compliance



Follow-up on Q&A  
from employers

# Disclaimer

*Please be advised that this presentation is not intended to provide legal or compliance advice or opinion. Such advice may only be given when related to specific fact situations. The materials are for informational purposes only and should not be relied upon as legal or compliance advice. This document is a general example. For use in practice, it is highly recommended that experienced employment counsel review and revise the example pursuant to the circumstances of each specific employer.*

# Today's Topics

1. COVID-19 Stats
2. CA masking update
3. COVID-19 SPSL (SB 114)




# COVID-19 Stats

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As of February 15, 2022

# CA COVID-19 Stats





# Masking Requirement Update

ETS and CDPH guidance

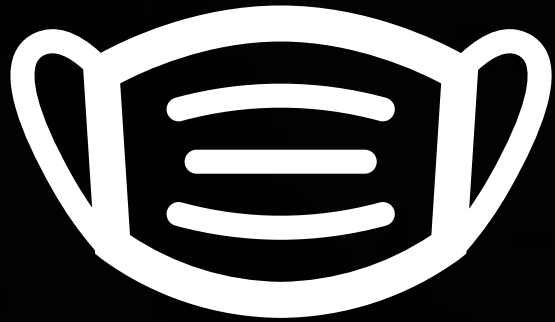


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# Who has to wear face coverings?

For the worksite (per OSHA's ETS):

Face coverings are required indoors and in vehicles for unvaccinated employees. Regardless of vaccination status, employees in certain indoor settings must wear a face covering **if required by CDPH order** or if they are a passenger in employer-provided transportation.



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# Common exceptions for indoor face coverings

Are there exceptions to wearing face coverings indoors?  
Yes. The most common exceptions are:

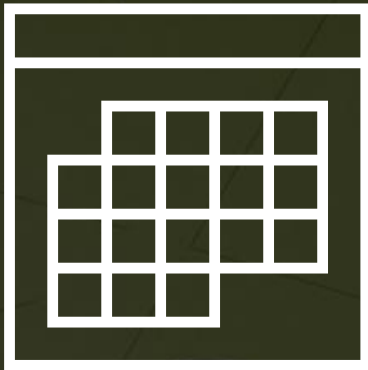


- When alone in a room or vehicle;
- When eating and drinking;
- When an accommodation is required; and
- When job duties make a face covering infeasible or create a hazard

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# CDPH Guidance on Face Coverings Taking Effect 2.16.22

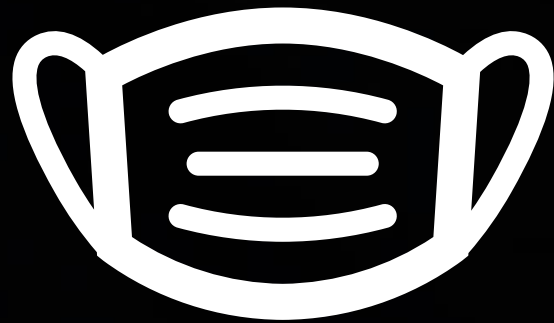
Masks are required for all individuals in the following indoor settings, regardless of vaccination status. Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended.



- On public transit (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)
- Indoors in K-12 schools, childcare
- Emergency shelters and cooling and heating centers
- Healthcare settings
- State and local correctional facilities and detention centers
- Homeless shelters
- Long Term Care Settings & Adult and Senior Care Facilities

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# CDPH Guidance Continued



Additionally, masks are required\* for unvaccinated individuals in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and local government offices serving the public).

Fully vaccinated individuals are recommended to continue indoor masking when the risk may be high.

There are certain individuals who are exempt from wearing a mask (example: children younger than 2).

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# Guidance for Businesses, Venue Operators or Hosts

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:



- Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.
- Implement vaccine verification to determine whether individuals are required to wear a mask.
- Require all patrons to wear masks.

No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

# COVID-19 Supplemental Paid Sick Leave

On February 9, 2022, the Governor signed Senate Bill (SB) 114, which provides COVID-19 SPSL for covered employees who are unable to work or telework due to COVID-19 from January 1, 2022 through September 30, 2022

AIU	HJI	WWE	PLO	EER	QRT	OPY
1,822 (-35)	20,369 (+580)	890 (-20)	6,350 (-200)	10,985 (+580)	665 (-15)	6,800 (-115)
MBC	LJH	MJB	PON	NFR	UGH	OMJ
3,605 (+210)	9,542 (-128)	2,609 (+35)	7,654 (+169)	6,522 (+122)	1,632 (-54)	3,652 (+182)
YBV	QMN	MMJ	JIT	KLM	CCX	EMH
3,204 (-33)	5,211 (+156)	7,100 (-60)	7,150 (-150)	782 (+74)	1,901 (+101)	3,280 (-120)
MBR	WFF	HJM	OLC	LSD	SDH	GHS
3,600 (-20)	712 (+12)	134 (+5)	2,022 (-18)	631 (+40)	6,287 (-57)	12,430 (+330)

# Covered Employers

1. SB 114 applies to employers who employ more than 25 employees (employers with 26 or more employees)
2. The employer need only have 26 or more employees total regardless of where they are located

# How Much Leave is Required?

1. The maximum potential amount of SPSL an employee can receive is 80 hours (pro rata for part-time employees)
2. There are two separate potential leave categories (or banks) of up to 40 hours available for different qualifying reasons
3. An employer is not required under SB 114 to pay more than \$511 for each day an employee uses SPSL, or more than \$5,110 overall



# Employee Use- Up to 40 hours

## Category 1

1. Employee is subject to a quarantine or isolation period related to COVID-19 as defined by federal, state or local orders or guidance
2. Employee is advised by a health care provider to self-quarantine or isolate
3. Employee or family member is attending an appointment to receive a COVID-19 vaccine or booster
4. Employee or family member is experiencing symptoms related to a COVID-19 vaccine or booster that prevents the employee from being able to work or telework
5. Employee is experiencing COVID-19 symptoms and is seeking a diagnosis
6. Employee is caring for a family member who is subject to a quarantine or isolation order or guidance or who has been advised by a health care provider to self-quarantine or isolate
7. Employee is caring for a child whose school or place of care is closed or otherwise unavailable due to COVID-19 on the premises.

# Limits on Vaccine- Related Leave

1. For each vaccination or booster, an employer may limit the total SPSL to 3 days or 24 hours
2. This includes time spent attending an appointment and/or vaccine or booster-related symptoms
3. If a healthcare provider verifies that the employee continues to experience symptoms related to the vaccine/booster, more than 3 days or 24 hours may be available

# Employee Use – Up to 40 Hours

## Category 2

1. Employee tests positive, or is caring for a family member who tests positive for COVID-19
2. Can require employees to provide documentation of the test result where the employee or family member tests positive for COVID-19 and can deny leave if employee refuses to provide documentation
3. If an employee tested positive and wants more than 5 days off, the employer can require the employee to take a test on or after day 5 at the employer's expense

# Amount of Leave available: Full-Time Employees

Full-time employees may receive up to 40 hours from each leave category if:

1. The employer considers the employee to work full-time (e.g., full-time is defined at 32 hours or more)
2. On average, the employee worked or was scheduled to work at least 40 hours per week in the two weeks preceding the date they took leave

# Amount of Leave Available: Part-Time Employees

1. Employees with a normal weekly schedule receive the total number of hours they are normally scheduled to work over one week
2. If an employee works a variable schedule, seven times the average number of hours the employee worked each day for the employer in the six months preceding the date the employee took leave
3. If the employee has worked for the employer fewer than six months, but more than 7 days, the calculation is made over the entire period the employee has worked for the employer
4. If the employee works a variable number of hours and worked for the employer for 7 days or fewer, they receive leave hours equal to the total number of hours worked

# Rate of Pay When Employees Use Leave

1. Non-exempt employees are paid at their “regular rate of pay”
2. For exempt employees, employers calculate SPSL in the same manner they calculate wages for other forms of paid leave

# Retroactive Requests

1. SB 114 is retroactive back to 1/1/22
2. If the employee took time off for reasons covered under SB 114, they are entitled to retroactively use SB 114 leave (unless the employer can claim an offset)
3. If the employee used any form of paid time off the employer has to credit that time back to the employee
4. Retroactive payments have to be paid on or before the payday for the next full pay period after the employee's oral or written request

# Employer Offsets

1. If an employer paid a COVID-19 supplemental benefit for the same reasons covered under SB 114 and the at the same rate, they can receive an offset
2. Employers cannot count paid sick leave employees have used under the Healthy Workplaces Healthy Families Act
3. Employers can also count local COVID-19 paid sick leave towards SB 114 obligations if it was for the same reasons and at the required rate



# SPSL

## Interaction with Exclusion Pay

1. Employers may not require employees to exhaust SB 114 SPSL if they are eligible for exclusion pay under the Cal/OSHA ETS
2. This is different than the prior SPSL (SB 95) that required employees to use SPSL before using exclusion pay

# Notice and Paystub Requirements

1. Employers must post a DLSE Model Notice (released on 2/16/22)
2. Employers must list the amount of SPSL available and the amount of leave used through the pay period
3. Employers should list “zero” if an employee did not use any SPSL during the pay period
4. Employers may provide the information in a separate written document if they cannot include it on the paystub



# FAQ Section

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2022

# FAQ 1

**What steps do we need to take to prepare to implement SB 114?**



# FAQ 2



**If an employee is retro eligible but has since terminated employment: what are the employer's obligations?**

# FAQ 3



**What about tax credits?**

# FAQ 4



**Do you count part-time employees? Do you count employees that are off on medical or leave of absence?**

# FAQ 5



**If employees have already been paid for COVID via workers' compensation or disability benefits, are employers still required to pay COVID time off?**



# FAQ 6



**Are we allowed to exhaust an employee's sick or vacation accruals prior to providing SB 114 SPSL?**

# FAQ 7



**If the employee's isolation period is only 5 days, but their medical provider takes them off work for a longer period are we required to continue to pay SPSL?**

# FAQ 8



**What type of documentation is acceptable as proof of a positive test?**

# FAQ 9



**Does an employee have to work for the employer for a certain period to be eligible?**

# FAQ 10



**Do we have to pay out retroactive SB 114 SPSL automatically?**



# Next steps

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Moving forward →

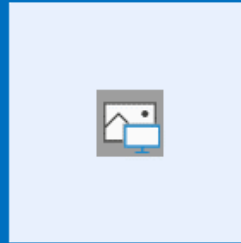
Additional resources...



[jennifer@silvershr.com](mailto:jennifer@silvershr.com)  
[info@esminsite.com](mailto:info@esminsite.com)

# Updated COVID-19 Prevention Plan

*Effective January 14, 2022*



## Enter Company Name COVID-19 PREVENTION PROGRAM

### BEST PRACTICES FOR MITIGATING THE RISK OF COVID-19

Our safety culture embraces the health and wellness of our team, and we are committed to providing a safe work environment. Creating a safe work environment is priority #1!

UPDATED JANUARY 14, 2022

## COVID-19 PREVENTION PROGRAM

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# Computer Based Trainings (English & Spanish)

Available to INSITE subscribers and to LMS users

The screenshot displays a training interface. The main content area features a video player with a background image of three people wearing face masks. Overlaid on the video is the text "EMPLOYEE TRAINING" and "COVID-19 WORKSITE SAFE PRACTICES". Below this, a subtitle reads "Worksite controls including vaccination policy, face coverings and reporting requirements." A blue button labeled "Start Course" is positioned at the bottom center of the video player. At the bottom of the video player are standard playback controls (play, refresh, volume, full screen) and navigation buttons labeled "PREV" and "NEXT". To the right of the video player is an "OUTLINE" sidebar. It includes a search bar and a list of seven items, each with a small thumbnail and a title: "1. COVID-19 WORKSITE SAFE PRACTICES", "2. Training Objectives", "3. ...", "4. Definition", "5. ...", "6. ...", and "7. ...".

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For more information on ESM's Learning Management System for employee training visit:  
[www.esminsite.com/learning-management-system](http://www.esminsite.com/learning-management-system)



Thank you!



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