

California Supplemental Paid Sick Leave (SB 95, 2021)

FAQs

Helpful Links:

FAQs on the California Department of Industrial Relations website
(includes definition of school/daycare closure)
<https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>

Actual SB95 bill language
(includes definition of child)
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB95

- 1) Since Natural Disaster Pay (NDP) and Supplemental Paid Sick Leave (SPSL) run concurrently, is it only NDP that was used from 1/1/21 to current that offsets SPSL?

Yes, that is correct. If an employee used their 40 hours of NDP prior to 1/1/21, it does not count toward their 80-hour SPSL entitlement. If they used NDP from 1/1/21 to current, those hours do count toward their 80-hour SPSL entitlement.

- 2) For any new leave, should we code it as NDP if they have not exhausted part or all of the 40 hours approved by the BOS last April, or should we use the SPSL code for all?

Any portion of NDP that exists and is used from 1/1/21 forward should be coded as SPSL (if eligible).

- 3) Would employees have to complete the CA Supplemental Sick Leave Pay and disaster attestation form?

Yes, the forms need to be completed for tracking purposes.

- 4) Can employees use either of the forms if they have not used the Natural Disaster Attestation Pay yet?

If an employee has NDP hours left and the reason for the leave meets SPSL criteria, the employee should only complete the SPSL request form (found on our COVID-19 Resources website under "Employee Resources" - <https://hr.ventura.org/benefits/covid19https://hr.ventura.org/benefits/covid19>).

- 5) Does remaining home due to an underlying health condition qualify?

The law describes eligibility as follows:

- **Caring for Yourself:** You are subject to quarantine or isolation period related to COVID-19: i) as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace; ii) you have been advised by a healthcare provider to quarantine; or iii) you are experiencing COVID-19 symptoms and are seeking a medical diagnosis.
- **Caring for a Family Member:** You are 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 you are caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- **Vaccine-Related:** You are attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

- 6) Does caring for a family member remaining home due to an underlying health condition qualify?

See answer to #5

- 7) How does an employee request a retro adjustment and what code do we use?

The law states an employee needs to submit a request to have any adjustments done. The SPSL request form that we have created can be used for both retro requests and prospective requests. The form can be found on our COVID-19 Resources website under "Employee Resources":

<https://hr.ventura.org/benefits/covid19>

The new SPSL time-reporting codes will be available as soon as the SPSL leave bank is created in the system (currently being configured and tested). In the meantime, please use the NDISS and NDISH time reporting codes for SPSL time. If an employee is making a retro request for SPSL, you will need to do a sick or vacation adjustment, as appropriate, to add the sick/vacation time used back to the employee's bank. Please also make a comment on the timesheet.

- 8) For retro requests, since EEs have already been paid, we return their sick hours to their bank but we do not put another line on the timecard to indicate SPSL; we just track it separately. Is this correct?

Since the employee was already paid for the time off, you would request an adjustment to have the regular sick hours put back into their bank. You would also request an SPSL adjustment (using codes that will be provided by the Auditor-Controller's Office) for the hours they used so their SPSL bank will have the hours subtracted from their total entitlement.

- 9) If an EE indicates they used vacation or floater for SPSL reason (even though they had sick hours), we adjust back the vac/floater hours?

Correct, but you'll also need to subtract their hours from the SPSL bank (once it has been created).

- 10) Is the CA Supplemental Paid Sick Leave available to Extra Help and Intermittent employees as well? Are management employees eligible for this?

Yes, SPSL applies to all County employees, regardless of class, bargaining unit, etc.

- 11) Some employees have claimed, and in some cases received, 4850 benefits and/or disability leave/payments. Will those payments need to be paid back only to pay SPSL?

We are continuing to seek legal guidance on the handling of retrospective SPSL credits where the employee *already received* Temporary Total Disability (TTD) of 4850 relating to a COVID-19 workers' compensation claim (on or after 1/1/21). If an employee already received 4850 or TTD benefits and asks that they be converted to SPSL, we will need to coordinate these transactions on a case by case basis with our workers' compensation claims administrators at Sedgwick. For COVID workers' compensation claims where the employee has not yet received TTD or 4850 payments and they are now owed, the employee will be required to exhaust the SPSL as required under SB 1159 before TTD or 4850 can be initiated.

- 12) An EE is TTD (unpaid) and is requesting 80 hours of SPSL. EE has been on LOA for more than a year. What do we do?

We are continuing to seek legal guidance on the handling of retrospective SPSL credits where the employee *already received* Temporary Total Disability (TTD) of 4850 relating to a COVID-19 workers' compensation claim (on or after 1/1/21). If an employee already received 4850 or TTD benefits and asks that they be converted to SPSL, we will need to coordinate these transactions on a case by case basis with our workers' compensation claims administrators at Sedgwick. For COVID workers'

compensation claims where the employee has not yet received TTD or 4850 payments and they are now owed, the employee will be required to exhaust the SPSL as required under SB 1159 before TTD or 4850 can be initiated.

13) Does the employee have to provide supporting documentation?

An employer may not deny a worker 2021 COVID-19 Supplemental Paid Sick Leave based solely on a lack of certification from a health care provider. A covered employee is entitled to take 2021 COVID-19 Supplemental Paid Sick Leave immediately upon the covered employee's oral or written request. The leave is not conditioned on medical certification.

Although an employer cannot deny 2021 COVID-19 Supplemental Paid Sick Leave solely for lack of a medical certification, it may be reasonable in certain circumstances to ask for documentation before paying the sick leave when the employer has other information indicating that the covered employee is not requesting 2021 COVID-19 Supplemental Paid Sick leave for a valid purpose. In any such claim, the reasonableness of the parties' actions will undoubtedly come into play.

For example, if a covered employee informs an employer that the covered employee is subject to a local quarantine order or recommendation, has to stay home, and qualifies for 2021 COVID-19 supplemental paid sick leave, but the employer subsequently learns that the covered employee was out at a park, the employer could reasonably request documentation.

(answer taken from <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>)

14) An employee had no reaction within the first few days of receiving the vaccine. What do we do in the event an employee comes back saying they had reaction days, weeks, or even a month after having the vaccine? Is there a reasonable time limit to justify usage? We have some supervisors that have employees saying they are having a reaction now that these hours are available.

See answer to #13

15) The information sent out indicated that "A covered employee is eligible to take SPSL if they are experiencing COVID-19 symptoms **AND** seeking medical treatment." Does this mean that they have to have seen a doctor or taken a COVID test? How do we verify that?

See answer to #13

16) Can we ask for confirmation that they attended a vaccine appointment or that a family member is being required to quarantine?

See answer to #13

17) An employee requested vacation for the day after her shots in anticipation of not feeling well and now she is asking for a vacation leave bank adjustment. Would this qualify for a leave bank adjustment under these new rules?

Yes, if the employee is now stating that she meets one of the eligibility criteria for SPSL for the day she took off.

18) Same employee used vacation, rather than sick leave due to not having sufficient sick leave banks. Does this program only replace sick leave hours?

No, any hours used (including vacation hours) should be replaced with SPSL.

19) Can an employee use SPSP to assist their child with distance learning?

No, the following is criteria to qualify for school/day care closure-related SPSP: “a child’s classroom in school or place of care has been closed after concern that a person who had been present on the school or daycare premises on or after January 1, 2021, was exposed to, or had contracted, COVID-19. This does not include caring for a child whose school or daycare was closed before January 1, 2021. If the school or daycare was closed on or after January 1, 2021, it must have been due to a closure, or partial closure, making the care unavailable due to COVID-19 on the premises.”

(answer taken from <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSP-2021.html>)

20) Do we need to send copies of the SPSP requests form to CEO HR or Labor Relations?

No, SPSP request forms should be kept in the agency/department records (handle similarly to the way your agency/department handles other time off requests, i.e. vacation, sick).

21) If an employee is already collecting disability benefits (i.e. SDI, UI, TTD, etc.), are they eligible for SPSP?

Because SPSP must be provided to an employee upon request before any other forms are pay, our recommendation is to explain to the employee this requirement and let them make the decision whether or not they want to apply for SPSP. If they qualify and request it, they should be cautioned that they will need to repay any disability benefit that was collected for the time period for which they are now requesting SPSP.

22) Are part-time employees eligible for the full 80 hours?

No, the hours are determined on a pro-rata basis. For example, if an employee is scheduled to work only 40 hours per biweek, they are only eligible for 40 hours of SPSP. See below for guidance on how to calculate eligible hours for a part-time employee with a variable work schedule.

Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer Over a Period of More Than 14 Days: For such a part-time covered employee who works variable hours, the covered employee may take fourteen times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took 2021 COVID-19 Supplemental Paid Sick Leave. If the part-time covered employee has worked for the employer for fewer than six months, this calculation would be done over the entire period that the covered employee has worked for the employer. If the variable schedule calculation results in an average work schedule of at least 40 hours per week, the variable-scheduled covered employee would be considered full time and entitled to 80 hours of leave because the laws require the employer to pay 80 hours of 2021 COVID-19 Supplemental Paid Sick Leave to a covered employee it properly considers full time, but does not require payment for more than 80 hours.

In calculating the average number of hours worked by a part-time covered employee with a variable schedule over the past six months, the figure is determined based on the total number of days in the 6-month period, not just the number of days worked. Below is an example using a 6-month period that contains a total of 182 days (26 weeks):

Total Number of Hours Worked During 6-Month Period	520 hours
Total Number of Days in 6-Month Period	182 days
Average Number of Hours Worked Each Day in 6-Month Period	$520 \text{ hours} \div 182 \text{ days} = 2.857 \text{ hours}$
2021 COVID-19 Supplemental Paid Sick Leave Entitlement	$2.857 \times 14 = 40 \text{ hours}$

Part-Time Covered Employees with Variable Schedules Who Have Worked For an Employer for a Period of 14 Days or Fewer: A covered employee who is newly hired (*i.e.*, hired 14 days or less) and works variable hours will be entitled to the number of 2021 COVID-19 Supplemental Paid Sick Leave hours that they have worked in the preceding two weeks. Below is an example of the calculation where such a new covered employee has worked for a total of two days—one day for 1 hour and a second day for 6 hours over the past two weeks:

Total Number of Hours Worked During the Two-Week Period	7 hours
Total Number of Days in a Two-Week Period	14 days
Average Number of Hours Worked Each Day in the Two-Week Period	$7 \text{ hours} \div 14 \text{ days} = .5 \text{ hours}$
2021 COVID-19 Supplemental Paid Sick Leave Entitlement	$.5 \text{ hours} \times 14 = 7 \text{ hours}$

(answer taken from <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>)