



WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
HUMAN RESOURCES
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The labor organizations had raised questions during an information meeting and the following questions were included for all members.

Questions and Answers: SB114 COVID Supplemental Leave

1. **How much must a covered employee be paid for 2021 COVID-19 Supplemental Paid Sick Leave that the employee is entitled to receive?**
 - a. **Will Teachers who coach and/or regularly substitute be compensated for a formula that includes their extra pay?**

Answer: For each hour of 2021 COVID-19 Supplemental Paid Sick Leave that a non-exempt covered employee is entitled to receive, the employee must be paid the highest of the following:

- The employee's regular rate of pay for the workweek in which the leave is taken
- A rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment
- The State minimum wage
- The local minimum wage

2021 COVID-19 Supplemental Paid Sick Leave for exempt covered employees must be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

An employer is not required to pay more than \$511 per day and \$5,110 in the aggregate to a covered employee for 2021 COVID-19 Supplemental Paid Sick Leave taken by the covered employee, but the covered employee may utilize other paid leave that may be available in order to receive what they would normally earn if the cap is reached.

Question 2. How do you calculate the leave entitlement for a part-time covered employee who does not have a set schedule?

Answer: Below are the two methods to calculate the entitlement for part-time covered employees.

- **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	$.5 \text{ hours} \times 14 = 7 \text{ hours}$

Question 3: What about employees who work for the district that reside in a multi-generational household?

Answer: Once the 40 hours or 80 hours expire, then the employee would use his/her personal sick time.

Question 4. In the absence of any information that a covered employee is not requesting 2021 COVID-19 Supplemental Paid Sick Leave for a valid purpose, can an employer require certification from a health care provider before allowing a covered employee to take the leave?

Answer: No. 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.

a) How do we prevent abuse of the COVID-19 Supplemental Sick Leave?

Answer: 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.

Question 5: Is antigen test acceptable for positive case or does it have to be PCR? Is home test acceptable proof of a positive case?

Answer: Yes – antigen

Question 6: What is the acceptable as proof for positive case (picture of test result or doctor note)?

Answer: Yes.

Question 7: What about substitutes who were signed up to work but did not actually work because of COVID.

Answer: If those employees did not work **at all**, the formula would indicate that they are not eligible for COVID leave.

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	0 hours
Total Number of Days in a Two-Week Period	14 days
Average Number of Hours Worked Each Day in the Two-Week Period	0 hours ÷ 14 days
2021 COVID-19 Supplemental Paid Sick Leave Entitlement	0 hours

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