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SB-114 Employment: COVID-19: supplemental paid sick leave. (2021-2022)

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Senate Bill No. 114

CHAPTER 4

An act to add Sections 248.6 and 248.7 to the Labor Code, relating to employment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor February 09, 2022. Filed with Secretary of State February 09, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 114, Committee on Budget and Fiscal Review. Employment: COVID-19: supplemental paid sick leave.

(1) Existing law, the Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Under existing law, an employee accrues paid sick days at a rate of not less than one hour per every 30 hours worked, subject to certain use, accrual, and yearly carryover limitations. Existing law requires the Labor Commissioner to enforce the act and provides for procedures, including investigation and hearing, and for remedies and penalties.

Existing law, until December 31, 2020, provided for COVID-19 food sector supplemental paid sick leave for food sector workers and required a hiring entity to provide COVID-19 food sector supplemental paid sick leave, as described, to each food sector worker unable to work due to specified reasons relating to COVID-19. Existing law also established, until December 31, 2020, COVID-19 supplemental paid sick leave for covered workers, including certain persons employed by private businesses of 500 or more employees or persons employed as certain types of health care providers or emergency responders by public or private entities.

Existing law, until September 30, 2021, provided for COVID-19 supplemental paid sick leave for covered employees, in-home supportive service providers, and waiver personal care service providers who were unable to work due to certain reasons related to COVID-19, including that the employee or provider was advised by a health care provider to self-quarantine due to concerns related to COVID-19. Existing law entitled a covered employee or provider to 80 hours of COVID-19 supplemental paid sick leave, as specified, and set the compensation for that leave.

This bill, beginning January 1, 2022, until September 30, 2022, would provide for COVID-19 supplemental paid sick leave for covered employees who are unable to work or telework due to certain reasons related to COVID-19, including that the employee is attending a COVID-19 vaccine or vaccine booster appointment for themselves or a family member, or is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster. The bill would entitle a covered employee to 40 hours of COVID-19 supplemental paid sick leave if that employee works full time or was scheduled to work, on average, at least 40 hours per week for the employer in the 2 weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave. The bill would provide a different calculation for supplemental paid sick leave for a covered employee who is a firefighter subject to certain work schedule requirements and for a covered employee working fewer or variable hours, as specified.

This bill would entitle a covered employee, in addition to the COVID-19 supplemental paid sick leave described above, to take up to 40 more hours of COVID-19 supplemental paid sick leave if the covered employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19. The bill would authorize the employer to require the covered employee, if that employee tests positive, to submit to another test on or after the fifth day after the first positive test and provide documentation of those results. The bill would also authorize the employer to require the covered employee to provide documentation of a family member's test result before paying the additional COVID-19 supplemental paid sick leave, as applicable. The bill would specify that the employer has no obligation to provide additional COVID-19 supplemental paid sick leave if the employee refuses to provide documentation of a test result.

This bill would provide that the total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled to under these provisions is in addition to any paid sick leave available under the Healthy Workplaces, Healthy Families Act of 2014, and in addition to prior COVID-19 supplemental paid sick leave the employee was entitled to, as specified.

This bill would specify the compensation rate for nonexempt and exempt covered employees. The bill would require the Labor Commissioner to enforce these COVID-19 supplemental paid sick leave provisions, and make publicly available a model notice relating to COVID-19 supplemental paid sick leave.

This bill would also provide for COVID-19 supplemental paid sick leave for specified in-home supportive service providers and waiver personal care service providers, as defined, who are unable to work due to certain reasons related to COVID-19. Under the bill, a provider would be entitled to COVID-19 supplemental paid leave for the same reasons as a covered employee. The bill would entitle a provider to up to 40 hours of COVID-19 supplemental paid leave, if the provider worked or was scheduled to work, on average, at least 40 hours per week, as specified, or met certain other work conditions, and entitle a provider to take additional COVID-19 supplemental paid sick leave under specified conditions. The bill would set the compensation rate for this supplemental paid sick leave, as specified. The bill would authorize the State Department of Social Services and the State Department of Health Care Services to implement, interpret, or make these provisions specific by means of all-county letters or similar instructions, without taking any regulatory action.

This bill would make these requirements, with respect to covered employees, in-home supportive service providers, and personal waiver care service providers, to provide COVID-19 supplemental paid sick leave take effect 10 days after the date of enactment of the bill and would apply these provisions retroactively to January 1, 2022, as specified. The bill would provide that the requirement to provide COVID-19 supplemental paid sick leave would apply until September 30, 2022, as specified.

(2) This bill would appropriate \$100,000 from the General Fund to the Labor Commissioner to implement the provisions related to the COVID-19 supplemental paid sick leave, as specified.

(3) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 248.6 is added to the Labor Code, to read:

248.6. (a) As used in this section:

(1) "Covered employee" means an employee who is unable to work or telework for an employer because of a reason listed under paragraph (1) of subdivision (b).

(2) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(3) "Employer" means an employer, as defined in subdivision (b) of Section 245.5, that employs more than 25 employees.

(4) "Family member" has the same meaning as in subdivision (c) of Section 245.5.

(5) "Firefighter" means an active firefighting member of any of the following:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(E) A fire department that serves a United States Department of Defense installation and whose firefighters are certified by the United States Department of Defense as meeting its standards for firefighters.

(F) A fire department that serves a National Aeronautics and Space Administration installation and that adheres to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(G) A fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.1) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations whose firefighters are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations.

(H) Fire and rescue services coordinators who work for the Office of Emergency Services. For purposes of this clause, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(b) A covered employee shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) An employer shall provide COVID-19 supplemental paid sick leave to each covered employee if that covered employee is unable to work or telework due to any of the following reasons:

(A) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidance that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to isolate or quarantine due to COVID-19.

(C) The covered employee is attending an appointment for themselves or a family member to receive a vaccine or a vaccine booster for protection against COVID-19, subject to the limitation in clause (ii) of subparagraph (D).

(D) (i) The covered employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevent the employee from being able to work or telework.

(ii) For each vaccination or vaccine booster, an employer may limit the total COVID-19 supplemental paid sick leave to 3 days or 24 hours unless the employee provides verification from a health care provider that the covered employee or their family member is continuing to experience symptoms related to a COVID-19 vaccine or vaccine booster. The 3-day or 24-hour limitation applied to each vaccine or vaccine booster includes the time used under subparagraph (C) to get the vaccine or vaccine booster.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member who is subject to an order or guidance described in subparagraph (A) or who has been advised to isolate or quarantine, as described in subparagraph (B).

(G) The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A covered employee shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A covered employee is entitled to 40 hours of COVID-19 supplemental paid sick leave, if the covered employee satisfies either of the following criteria:

(i) The employer considers the covered employee to work full time.

(ii) The covered employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the covered employee took COVID-19 supplemental paid sick leave.

(B) Notwithstanding subparagraph (A), a covered employee who is a firefighter who was scheduled to work more than 40 hours for the employer in the one workweek preceding the date the covered employee took COVID-19 supplemental paid sick leave is entitled to an amount of COVID-19 supplemental paid sick leave equal to the total number of hours that the covered employee was scheduled to work for the employer in that workweek.

(C) A covered employee who does not satisfy the criteria in subparagraph (A) or subparagraph (B) is entitled to an amount of COVID-19 supplemental paid sick leave as follows:

(i) If the covered employee has a normal weekly schedule, the total number of hours the covered employee is normally scheduled to work for the employer over one week.

(ii) If the covered employee works a variable number of hours, seven 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 COVID-19 supplemental paid sick leave. If the covered employee has worked for the employer over a period of fewer than six months but more than seven days, this calculation shall instead be made over the entire period the covered employee has worked for the employer.

(iii) If the covered employee works a variable number of hours and has worked for the employer over a period of seven days or fewer, the total number of hours the covered employee has worked for that employer.

(D) (i) A covered employee is entitled to additional COVID-19 supplemental paid sick leave in an amount not to exceed that which the covered employee was entitled to under subparagraph (A), (B), or (C), as applicable, if the covered employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.

(ii) If the employee tested positive as described in clause (i), an employer may require the employee to submit to a diagnostic test on or after the fifth day after the test described in clause (i) was taken and provide documentation of those results. The employer shall make such a test available at no cost to the employee.

(iii) If the employee requests to use additional leave pursuant to this subparagraph because a family member for whom they are providing care tests positive for COVID-19, the employer may require that the employee provide documentation of that family member's test results before paying the additional leave.

(iv) The employer has no obligation to provide additional COVID-19 supplemental paid sick leave under this subparagraph for an employee who refuses to provide documentation of the results of the test described in clause (i) upon the request of the employer.

(v) The employee does not need to exhaust the leave to which they are entitled under subparagraph (A), (B), or (C), before using the additional leave provided for in this subparagraph.

(vi) This section shall not limit an employer's duties to comply with the Cal-OSHA COVID-19 Emergency Temporary Standards, including, but not limited to, Sections 3205 to 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal-OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations.

(E) The total maximum amount of COVID-19 supplemental paid sick leave a covered employee is entitled to pursuant to this section shall not exceed 80 hours for the period between January 1, 2022, and September 30, 2022. This subparagraph does not apply to employees subject to subparagraph (B) of paragraph (2) of this subdivision.

(F) The total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled pursuant to subparagraph (A), (B), or (C), and the total number of hours of additional COVID-19 supplemental paid sick leave to which a covered employee is entitled pursuant to subparagraph (D), shall be in addition to any paid sick leave that may be available to the covered employee under Section 246.

(G) A covered employee may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered employee is entitled pursuant to subparagraph (A), (B), (C), or (D). The employer shall make COVID-19 supplemental paid sick leave available for immediate use by the covered employee, upon the oral or written request of the covered employee to the employer.

(H) An employer is not required to provide a covered employee more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C), or more than the total number of hours of additional COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to subparagraph (D).

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

(i) For nonexempt covered employees, by one of the following:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.

(ii) COVID-19 supplemental paid sick leave for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(B) Notwithstanding subparagraph (A), a covered employee who is entitled to an amount of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay to which the covered employee would be entitled as if the covered employee had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(C) Notwithstanding subparagraph (A) or (B), an employer shall not be required to pay more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars (\$5,110) in the aggregate to a covered employee for COVID-19 supplemental paid sick leave taken by the covered employee unless federal legislation is enacted that increases these amounts beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new federal dollar amounts shall apply to this section as of the date the new amounts are applicable under the federal law. Nothing in this subparagraph shall prevent a covered employee who has reached the maximum amounts, as set forth herein, from choosing to utilize other paid leave that is available to the covered employee in order to fully compensate the covered employee for leave taken.

(4) An employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(5) 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, including, but not limited to, Sections 3205 to 3205.4, inclusive, of Title 8 of the California Code of Regulations or the Cal-OSHA Aerosol Transmissible Diseases Standard at Section 5199 of Title 8 of the California Code of Regulations.

(c) Notwithstanding subdivision (b), if an employer pays a covered employee another supplemental benefit for leave taken on or after January 1, 2022, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that compensates the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then the employer may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the covered employee is entitled under Section 246, subdivision (e) of Section 248, subdivision (f) of Section 248.1, or subdivision (f) of Section 248.2 but may include paid leave provided by the employer pursuant to any federal or local law in effect or that became effective on or after January 1, 2022, if the paid leave is provided to the covered employee under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply as follows:

(1) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid sick leave constitutes "paid sick days," "paid sick leave," or "sick leave" under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5.

(2) For purposes of the enforcement of subdivision (i) of Section 246 as it relates to this section, COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days. The employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave. This requirement is not enforceable until the next full pay period following the date that this section takes effect.

(3) Section 249 applies to COVID-19 supplemental paid sick leave.

(4) By seven days after the date of enactment of this section, the Labor Commissioner shall make publicly available a model notice for purposes of Section 247. Only for purposes of COVID-19 supplemental paid sick leave, if an employer's covered employees do not frequent a workplace, the employer may satisfy the notice requirement of subdivision (a) of Section 247 by disseminating notice through electronic means, such as by electronic mail.

(e) (1) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the requirements shall apply retroactively to January 1, 2022.

(2) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2022, in order to protect the economic well-being of covered employees who took leave for the reasons listed in paragraph (1) or (2) of subdivision (b) beginning on or after January 1, 2022, as all the requirements in Sections 248, 248.1, 248.2, and 248.3, and the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127) expired before the effective date of this section. An employer may require a covered employee to provide documentation of a positive COVID-19 diagnostic test during the relevant period if an employee requests retroactive payment of the COVID-19 supplemental paid sick leave described in clause (i) of subparagraph (D) of paragraph (2) of subdivision (b).

(A) (i) For any such leave taken, if the employer did not compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then upon the oral or written request of the employee, the employer shall provide the covered employee with a retroactive payment that provides for such compensation.

(ii) For any such leave taken, if the employer did compensate the covered employee in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of subdivision (b), then upon the oral or written request of the employee, such employee should be credited for any leave hours used for COVID-specific leave purposes, and the employer should be credited for providing those hours as COVID-19 supplemental paid sick leave.

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the employer is required to provide to the covered employee under paragraph (2) of subdivision (b).

(C) This retroactive payment shall be paid on or before the payday for the next full pay period after the oral or written request of the covered employee. The retroactive payment shall be reflected on the written notice required by paragraph (2) of subdivision (d) for the corresponding pay period.

(D) The requirement to provide a retroactive payment under this subdivision is in addition to the requirement in subdivision (f) of Section 248.2 that a covered employee taking COVID-19 supplemental paid sick leave at the time of the expiration of those sections shall be permitted to take the full amount of such supplemental paid sick leave to which that covered employee otherwise would have been entitled under those sections.

(f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2022, except that a covered employee taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the covered employee otherwise would have been entitled under this section.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) The provisions of this section shall not apply to providers of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

SEC. 2. Section 248.7 is added to the Labor Code, to read:

248.7. (a) As used in this section:

(1) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Family member" has the same meaning as in subdivision (c) of Section 245.5.

(3) "Provider" or "providers" means a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code.

(4) "Work" or "worked" means providing authorized in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, or waiver personal care services pursuant to Section 14132.97 of the Welfare and Institutions Code, to an eligible recipient.

(b) A provider shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) COVID-19 supplemental paid sick leave shall be available to a provider if that provider is unable to work due to any of the following reasons:

(A) The provider is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidance of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer who has jurisdiction over the workplace. If the provider is subject to more than one of the foregoing, the provider shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidance that provides for the longest minimum period.

(B) The provider has been advised by a health care provider to isolate or quarantine due to COVID-19.

(C) The provider is attending an appointment for themselves or a family member to receive a vaccine or vaccine booster for protection against COVID-19, subject to the limitation in clause (ii) of subparagraph (D).

(D) (i) The provider is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevents the provider from being able to work.

(ii) For each vaccination or vaccine booster, the provider is limited in total COVID-19 supplemental paid sick leave to 3 days or 24 hours unless the provider provides verification from a health care provider that the provider or their family member is continuing to experience symptoms related to a COVID-19 vaccine or vaccine booster. The three days or 24 hour limitation applied to each vaccine or vaccine booster includes the time used under subparagraph (C) to get the vaccine or vaccine booster.

(E) The provider is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The provider is caring for a family member who is subject to an order or guidance described in subparagraph (A) or who has been advised to isolate or quarantine, as described in subparagraph (B).

(G) The provider is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

(2) A provider shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A provider is entitled to 40 hours of COVID-19 supplemental paid sick leave if the provider worked or was scheduled to work, on average, at least 40 hours per week in the two weeks preceding the date the provider took COVID-19 supplemental paid sick leave.

(B) A provider who does not satisfy the criteria in subparagraph (A) is entitled to an amount of COVID-19 supplemental paid sick leave as follows, up to a maximum of 40 hours of COVID-19 supplemental paid sick leave:

(i) If the provider has a regular weekly schedule, the total number of hours the provider is normally scheduled to work over one week.

(ii) If the provider works a variable number of hours, seven times the average number of hours the provider worked each day for the employer in the six months preceding the date the provider took COVID-19 supplemental paid sick leave. If the provider has worked over a period of fewer than six months but more than seven days, this calculation shall instead be made over the entire period the provider has worked.

(iii) If the provider works a variable number of hours and has worked over a period of seven days or fewer, the total number of hours the provider has worked.

(C) The total number of hours of COVID-19 supplemental paid sick leave to which a provider is entitled pursuant to subparagraph (A) or (B) shall be determined on the first day that the provider uses COVID-19 supplemental paid sick leave under this section.

(D) A provider is entitled to additional COVID-19 supplemental paid sick leave in an amount not to exceed that which the provider was entitled to under subparagraph (A) or (B), if the provider, or a family member for whom the provider is providing care, tests positive for COVID-19 via a diagnostic test.

(E) A provider may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the provider is entitled pursuant to subparagraph (A), (B), or (D). The COVID-19 supplemental paid sick leave is available for immediate use by the provider, and the provider shall inform the recipient of the need to take sick leave and submit a sick leave claim to the county consistent with established procedures in that county. The COVID-19 supplemental paid sick leave shall be in addition to any paid sick leave that may be available to the provider under Section 246.

(F) The total maximum amount of COVID-19 supplemental paid sick leave a provider is entitled to pursuant to this section shall not exceed 80 hours for the period between January 1, 2022, and September 30, 2022.

(3) Each hour of COVID-19 supplemental paid sick leave shall be compensated at the regular rate of pay to which the provider would be entitled if the provider had been scheduled to work those hours pursuant to existing law or an applicable collective bargaining agreement.

(4) A provider shall not be required to use any other paid or unpaid leave before the provider uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a provider takes paid leave on or after January 1, 2022, that is payable for the reasons listed in paragraph (1) of subdivision (b) that compensates the provider in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), the hours of the other paid benefit or leave may be counted towards the total number of hours of COVID-19 supplemental paid sick leave to which the provider is entitled under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental benefit for leave taken that may be counted does not include paid sick leave to which the provider may be entitled to under Section 246, but may include paid leave provided by any federal or local law that becomes effective on or after January 1, 2022, if the paid leave is provided to the provider under that law for any of the same reasons set forth in paragraph (1) of subdivision (b).

(d) (1) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall take effect 10 days after the date of enactment of this section, at which time the entitlements shall apply retroactively to January 1, 2022.

(2) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section applies retroactively to January 1, 2022.

(A) For any such leave taken, if the provider was not compensated in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the provider is entitled as set forth under paragraph (3) of subdivision (b), then the provider shall be entitled to a retroactive payment that provides for such compensation.

(B) For any such retroactive payment, the number of hours of leave corresponding to the amount of the retroactive payment shall count towards the total number of hours of COVID-19 supplemental paid sick leave that the provider is entitled to under paragraph (2) of subdivision (b).

(e) The entitlement to COVID-19 supplemental paid sick leave as set forth in this section shall remain in effect through September 30, 2022, except that a provider taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which the provider otherwise would have been entitled under this section.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

SEC. 3. The sum of one hundred thousand dollars (\$100,000) is hereby appropriated from the General Fund to the Labor Commissioner to implement the provisions related to the COVID-19 supplemental paid sick leave, as set forth in this act.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.