





December 17, 2021

Members
California State Legislature
State Capitol
Sacramento, CA 95814

Sent via email

**SUBJECT: EXTENSION OF COVID-19 PAID SUPPLEMENTAL SICK LEAVE FROM OCTOBER 2021
OPPOSE**

To Whom It May Concern:

The California Chamber of Commerce and the organizations listed below respectfully must oppose the request for an immediate extension COVID-19 paid sick leave dating back to October 2021 as proposed in the letter titled "December 16 2021 SPSL Budget Letter".

California workers do not need to choose between going to work sick or staying home without pay. Employees who test positive for COVID-19 or are exposed at work are entitled to paid leave under the CalOSHA Emergency Temporary Standard (CalOSHA ETS) and testing at no cost. On December 16, 2021, Governor Newsom issued an executive order extending CalOSHA's ability to renew that ETS through December 31, 2022.

Further, the situation has changed significantly since SB 95 was enacted last March and will continue to evolve. Far fewer Californians were vaccinated, and many Californians had not yet had the opportunity to get vaccinated. Now, vaccines, *including booster shots*, are free and widely available – but many Californians are choosing not to get them. This has led us to what has been called a "pandemic of the unvaccinated" where individuals are choosing to make themselves vulnerable to COVID-19 by avoiding safe vaccines. If it is California's policy to increase vaccination rates, requiring employers to provide more and more paid leave to the unvaccinated undermines that goal.

Finally, small businesses are at their breaking point. They have faced labor shortages, minimum wage increases, continuous new health and safety obligations, and multiple new leave mandates since the start of the pandemic. Federal tax credits that helped employers absorb the cost of prior COVID-19 paid sick leave mandates have expired. Any new leave would be a tremendous financial burden on those businesses.

The CalOSHA Emergency Temporary Standard Provides Paid Leave to Employees Who Have COVID-19 or Were Exposed Through 2022:

CalOSHA's ETS is designed to address this exact issue: how to keep COVID-19 out of the workplace and how to ensure workers who contract COVID-19 are able to stay home. Under the ETS, any employee who has COVID-19 is entitled to paid leave for a minimum of ten days. Any employee who is exposed at work may also be entitled to paid leave depending on vaccination status, symptoms, and whether the worker is able to work without risk of exposure to others. The employer is also responsible for providing testing to the workers at no cost.

On December 16, Governor Newsom issued Executive Order N-23-21 permitting CalOSHA to extend the ETS to December 31, 2022. In that order, he explicitly stated that the extension was to give the Legislature time to assess whether to enact workplace safety legislation in response to COVID-19 and to give CalOSHA additional time to evaluate which provisions should be included in any permanent regulation. It would therefore be inappropriate and unnecessary for the Legislature to rush to pass additional COVID-19 paid sick leave.

Never-ending COVID-19 Paid Sick Leave Undermines California's Efforts to Encourage Vaccination and Burdens Employers for Their Employees' Refusal of Vaccination:

Encouraging vaccination is essential to the safety of all Californians and keeping our economy open. However, enacting what would be a third round of paid sick leave for those who have chosen to remain unvaccinated only encourages the decision to remain unvaccinated. This concern echoes across California's businesses. We polled 900 of our members regarding COVID-19 Supplemental Paid Sick Leave. Over forty percent of them are worried that additional COVID-19 paid sick leave would discourage employees from getting vaccinated.

Beyond encouraging vaccine hesitancy, such an extension would also place the burden of the employees' refusal to get vaccinated on California's struggling businesses by forcing them to provide additional leave because their employees' chose to refuse easily accessible vaccination. In other words: extending sick leave will burden businesses and potentially incentivize more workers to remain unvaccinated – in direct conflict with California's best interests.

Federal Tax Credits Expired on September 30, 2021, Leaving Small Businesses with No Means by Which to Offset the Cost of Leave:

The federal tax credits that helped offset some of small businesses' costs for prior COVID-19 paid sick leave mandates are expired. Out of the 900 members that we polled, more than 500 of them had sought federal tax credits to help offset the cost of COVID-19 paid sick leave. Forty percent of respondents are concerned about being able to afford additional COVID-19 paid sick leave. Moreover, supporters of the "December 16 2021 SPSP Budget Letter" are demanding that new leave be retroactive to October 1, 2021. That would mean small businesses would be required to pay back pay to employees for any leave taken over the past few months. This would be an immediate drain on capital that businesses did not budget for or anticipate.

In contrast with the many small businesses across California that have failed or are barely hanging on, the State of California had an astonishing \$76 billion budget surplus last year, not including federal stimulus aid. The Legislative Analyst's Office estimates California's 2022 budget surplus will be at least \$31 billion.¹ If California believes it is good policy to provide extended sick leave for COVID-19 into the coming year, then - similar to the federal government- California should use its surplus to help pay. California's response to COVID-19 cannot continue to be borne by the business community, especially in light of other considerable paid time off and testing requirements under the CalOSHA ETS, the workers' compensation presumption, and recent expansion of 12 weeks of family leave.

¹ <https://lao.ca.gov/reports/2021/4472/fiscal-outlook-111721.pdf>

Sixty Percent of Employers are Concerned About Abuses of COVID-19 Paid Sick Leave:

Businesses are presently understaffed. Many industries report being unable to fill open positions despite increasing pay and benefits.² Layering of leaves and potential abuse of paid leave exacerbates this staffing issue. The latest round of COVID-19 paid sick leave in SB 95 prohibited employers from requesting any documentation to support the workers' leave request. More than sixty percent of the employers that we surveyed raised concerns about employees fraudulently using SB 95 leave because employers cannot ask for documentation. Employers reported employees requesting multiple days off for vaccine side effects *before even getting the shot*, with some requesting the entire 80 hours up front. Because SB 95 permitted employees to take 80 hours off to get the vaccine, those employers had no choice but to grant the leave. Others reported knowing people who admitted to taking paid time off under SB 95 or the CalOSHA ETS without symptoms because they knew they could just tell their employer that they were exposed or sick and the employer could not require any proof.

Multiple Sources of Paid and Unpaid Leave Already Exist In Addition to the ETS:

In addition to the paid leave provided for in the ETS, employees in California presently have multiple sources of both paid and unpaid leave that can be used for COVID-19-related purposes.

1) Paid Sick Leave

Under California Labor Code Section 246, employees are entitled to a minimum of 24 hours or three days of paid sick leave. That leave can be used for a health condition or preventative care for the employee or their family member. Family members include children, parents, parents-in-law, spouses, domestic partners, grandparents, grandchildren, or siblings. Multiple cities have even broader paid sick leave requirements through local ordinances, including Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, and Santa Monica. Beyond these requirements, many employers voluntarily offer *more* than three days of paid sick leave and many also offered supplemental COVID-19 paid sick leave even before it was mandated.

2) Twelve Weeks of Leave Under California Family Rights Act ("CFRA")

Employees who work for businesses with just five or more employees may also take up to twelve weeks of leave under CFRA. That leave is "protected," meaning the employer has no discretion to deny it or ask the employee to modify the leave to accommodate the employer's business operations or other employees who may be out of work on other California leaves of absence. The leave can be taken in increments as small as one hour if needed. It can be used for the employee's own serious medical condition, which may include COVID-19, or to care for a family member. The family members for which employees can take leave to provide care was expanded by SB 1383 (Jackson) in 2020 so that it now includes children, children of a domestic partner, parents, spouses, domestic partners, grandparents, grandchildren, or siblings. In support of the bill, Senator Jackson explicitly stated that the bill was **"necessary to ensure California workers affected by the coronavirus can take time to care for themselves or a sick family member** and keep their workplaces and communities healthy and safe."³

While out on CFRA leave, employees can receive pay through State Disability Insurance or Paid Family Leave administered through the EDD, use paid vacation time or PTO offered by an employer, or use paid sick leave.

Mere months after small businesses had to adjust operations to learn how to comply with CFRA, they had to give employees an additional two weeks of paid leave under SB 95 retroactive to January 1, 2021. Our small businesses cannot take on more mandated leaves.

3) Twelve Weeks of Leave Under Family and Medical Leave Act ("FMLA")

Employees who work for businesses with 50 or more employees are also eligible for twelve weeks of leave under the FMLA. Similar to CFRA, this is protected leave that can be used for the employee's own medical condition or

² See [California employers dangle incentives amid labor shortage | CalMatters](#)

³ Assem. Com. On Labor and Employment, Analysis of Senate Bill No. 1383 (2019-2020 Reg. Sess.), as amended June 29, 2020, p. 5. (emphasis added).

to care for a family member. Prior to 2021, CFRA and FMLA leave ran concurrently. Now that the list of family members under CFRA is broader, an employee could take up to six and a half months of leave:

3 months – CFRA leave for a domestic partner, child of a domestic partner, grandparent, grandchild, or sibling;

PLUS (+)

3 months – FMLA leave for their own medical condition or the medical condition of their spouse, child or parent

PLUS (+)

2 weeks – AB 84/SB 95 leave to care for any individual who is experiencing symptoms of COVID-19 and seeking a medical diagnosis, has been advised to self-isolate, or is caring for someone whose school or place of care is closed for reasons related to COVID-19

As with CFRA, an employee can apply for pay from the EDD or use other paid benefits offered by their employer while out on leave.

4) Paid Vacation and PTO

In addition to paid sick leave, many employers voluntarily offer paid vacation or PTO. Although an employee should not need to use this for a COVID-19 diagnosis given the paid leave under the ETS and leave provided under CFRA and the FMLA, if needed employees can also use these voluntary paid leaves offered by their employer.

5) Workers' Compensation

Under SB 1159 (Hill), there is a presumption that any firefighters/rescue services, peace officers, certain medical providers, and providers of in-home supportive services or other employees who contracted COVID-19 during an outbreak at the workplace is covered by workers' compensation. Those employees are entitled to medical treatment and benefits, including paid leave.

6) Child Care Provider or School Unavailability Leave

If a child needs to be picked up because of potential exposure or their child care provider or school is unexpectedly unavailable due to COVID-19, workers have 40 hours of job-protected leave they can take to care for that child.

We are now approaching two years of having the employer community subsidize the state's response to this virus despite California's record-setting budget surpluses. Any action taken by the Legislature must consider how to best help both workers and employers and to increase vaccination rates, not a rushed effort to again throw the burdens of COVID-19 onto California's employers.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services
African American Famers of California
Agricultural Council of California
Allied Managed Care
Almond Alliance of California
Associated General Contractors

Association of California Egg Farmers
Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Apartment Association
California Assisted Living Association
California Association for Health Services at Home
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Wheat Growers
California Attractions and Parks Association
California Bankers Association
California Bean Shippers Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association
California Craft Brewers Association
California Farm Bureau
California Food Producers
California Fresh Fruit Association
California Fuels and Convenience Alliance
California Grain and Feed Association
California Hotel and Lodging Association
California Manufacturers and Technology Association
California New Car Dealers Association
California Pear Growers Association
California Restaurant Association
California Retailers Association
California Seed Association
California Staffing Professionals
California State Floral Association
California Strawberry Commission
California Travel Association
California Trucking Association
California Warehouse Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Family Business Association of California
Family Winemakers of California
Far West Equipment Dealers Association
Flasher Barricade Association
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Mammoth Lakes Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Nisei Farmers League
Oceanside Chamber of Commerce
Orange County Business Council
Pacific Coast Renderers Association

Pacific Egg & Poultry Association
Palos Verdes Peninsula Chamber of Commerce
Plant California Alliance
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
San Jose Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santa Rosa Metro Chamber
Simi Valley Chamber
Torrance Area Chamber of Commerce
Tri-County Chamber Alliance
Tulare Chamber of Commerce
Valley Industry & Commerce Association
Walnut Creek Chamber of Commerce & Visitors Bureau
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Carwash Association
Western Electrical Contractors Association
Wine Institute

cc: Stuart Thompson, Office of the Governor
Angie Wei, Office of the Governor

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