



# POMS

RISK CONTROL  
& INSURANCE  
SMARTER INSURANCE  
FOR SMARTER BUSINESS.

## Risk Control Webinar Series: Legislative, COVID, and Other Updates for 2022

Maria Brunel, CSP

[mbrunel@pomassoc.com](mailto:mbrunel@pomassoc.com)

Larry Vigil, CSP, CSR, CPSI, CIC

[lvigil@pomsassoc.com](mailto:lvigil@pomsassoc.com)

Amy Dolson, CSP

[adolson@pomsassoc.com](mailto:adolson@pomsassoc.com)

Steven G. Meilleur, Ph.D., SPHR

[smeilleur@pomsassoc.com](mailto:smeilleur@pomsassoc.com)

## Objectives Today

- ▲ Update Revised Cal/OSHA Emergency Temporary Standard (ETS)
- ▲ NM Healthy Workplaces Act
- ▲ CA SB114 Supplemental Paid Sick Leave

# Update Cal/OSHA Emergency Temporary Standard (ETS)

- ▶ On December 16, 2021, Cal OSHA re-adopted the ETS for the second time with important revisions
- ▶ Effective January 14, 2022
- ▶ Applies to most workers in California not covered by the Aerosol Transmissible Diseases standard (ATD)
- ▶ Will not remain in effect beyond: December 31, 2022 (per Executive Order N-23-21 signed on Dec. 16, 2021)
- ▶ Important Requirements that have **NOT** changed:
  - ▶ Employers must have written Covid-19 Prevention Plan that includes:
    - ▶ Identifying and evaluating employee exposures to Covid-19 Health Hazards.
    - ▶ Implementing effective policies and procedures to correct unsafe and unhealthy conditions.
    - ▶ Allowing adequate time for handwashing and cleaning frequently touched surfaces and objects.
    - ▶ Employers must provide effective training and instructions on how Covid 19 is spread, infection prevention techniques and information regarding Covid-19 related benefits. effective training.

## Key Changes to ETS- Investigating and responding to Covid-19 cases in the workplace

- ▶ Within one business day-employers must continue to properly notify employees, employees' representative and any other workers at the worksite of possible Covid-19 exposure.
- ▶ Section updated to give employers more clear instructions on how to notify employees.
- ▶ <https://www.dir.ca.gov/dosh/coronavirus/Revisions-FAQ.html>

# Key Changes to ETS- Testing and Exclusion

## ▶ Revised Definitions

- ▶ The definition of "COVID-19 test" now includes specific instructions for workers using a test at home with self-read results. The employer or a telehealth professional must observe the use of the test.
- ▶ The definition of "fully vaccinated" now includes the minimum amount of time workers need to wait between the first and second dose of a two-dose vaccine.

## ▶ Testing Requirements:

- ▶ Employers must offer testing at no cost to employees during paid time to:
  - Symptomatic unvaccinated employees, regardless of whether there is a known exposure (this is the same as the previous version of the ETS)
  - **All** employees regardless of vaccination status, who have had close contact with a COVID-19 case, except for recently recovered employees
  - **All** employees, except for recently recovered employees, regardless of vaccination status, in an outbreak or a major outbreak.

## ▶ How to get FDA-approved rapid antigen home tests

- ▶ Starting January 19, 2022 every home in the U.S. is eligible to order 4 free at-home COVID-19 tests, without shipping fees, from the [federal government](#).

# CA Quarantine/Isolation Periods

- ETS Quarantine/Isolation periods are now in line with the California Department of Public Health (CDPH)
- [https://www.dir.ca.gov/dosh/dosh\\_publications/Isolation-and-Quarantine-fs.pdf](https://www.dir.ca.gov/dosh/dosh_publications/Isolation-and-Quarantine-fs.pdf)

Vaccination status	Isolation or quarantine	Period of time to be excluded from work
<b>All workers that test positive for COVID-19, regardless of vaccination status</b>	Isolation	<ul style="list-style-type: none"> <li>Must be excluded from the workplace for at least 5 days.</li> <li>A worker can return to work after day 5 if they do not have symptoms <u>and</u> test negative.</li> <li>If a worker cannot test or declines to test<sup>1</sup> they can return to work after 10 days.</li> <li>Must wear a face covering around others at work for a total of 10 days after the positive test.</li> </ul>
<b>Unvaccinated workers exposed to someone with COVID-19</b>	Quarantine	<ul style="list-style-type: none"> <li>Must be excluded from the workplace for 5 days after the close contact <u>and</u> take a test on day 5.</li> <li>A worker can come back to work after day 5 if they test negative and do not have any symptoms.</li> <li>If the worker cannot test or declines to test<sup>1</sup> they can return to the workplace after day 10 if they do not have symptoms.</li> <li>Must wear a face covering around others at work for 10 days after exposure.</li> <li>If the worker develops symptoms, they must be excluded pending a test result.</li> </ul>
<b>Booster-eligible, but not boosted workers exposed to someone with COVID-19</b>	No quarantine	<ul style="list-style-type: none"> <li>Does not need to be excluded from work if asymptomatic but must have a negative test 3-5 days after close contact.</li> <li>Must wear a face covering around others at work for 10 days after exposure. If the worker develops symptoms, they must be excluded pending a test result.</li> </ul>
<b>Workers received a booster, or are fully vaccinated but not yet booster-eligible.</b>	No quarantine	<ul style="list-style-type: none"> <li>Does not need to be excluded from work if asymptomatic, but must take a test on day 5 after exposure.</li> <li>Must wear a face covering around others at work for 10 days after exposure.</li> <li>If they develop symptoms, the worker must be excluded from the workplace pending a test result.</li> </ul>

# Guidance for the Use of Face Masks

## California:

- ▶ Effective February 16, 2022, California Department of Public Health (CDPH) order
  - ▶ Universal masking shall remain required in only specified settings including:
    - Indoors in K-12 Schools
    - Public Transit (airplanes, ships, trains, subways, buses, taxis, ride shares and in transportation hubs)
    - Healthcare settings
    - Emergency shelters and cooling heating centers
    - State and local correctional facilities and detention centers
    - Homeless shelters
    - Long Term Care Settings & Adult and Senior Care Facilities
  - ▶ Only unvaccinated persons are required to mask in all Indoor Public Settings
  - ▶ Fully vaccinated individuals are recommended to continue indoor masking when the risk may be high - Surgical masks or higher-level respirators (e.g., N95s, KN95s, KF94s) with good fit are highly recommended
- ▶ Counties may choose to enact more stringent health orders

The definition of "face covering" was updated to include as an example of an acceptable face covering "tightly woven fabric or nonwoven material of at least two layers" that does not let light pass through when held up to a light source.

## New Mexico:

- ▶ Indoor face masks are still in effect

# Reminder to Employers!

## Time to Post Your OSHA 300A Summary

- ▶ The summary must be posted between **February 1st** and **April 30th**, and employers are required to post the form even if they had no incidents during the previous year.
- ▶ Cal/OSHA says COVID cases must be recorded “like any other occupational illness.” To be recordable, an illness must be work-related and result in one of the following:
  - ▶ Death;
  - ▶ Days away from work;
  - ▶ Restricted work or transfer to another job;
  - ▶ Medical treatment beyond first aid;
  - ▶ Loss of consciousness; or
  - ▶ A significant injury or illness diagnosed by a physician or other licensed health-care professional.
- ▶ If a COVID case qualifies under one of these criteria, an employer must record the case on Cal/OSHA 300, 300A and 301 forms.
- ▶ OSHA 300A Exemptions:  
<https://www.osha.gov/recordkeeping/presentations/exempttable>



## FED OSHA Coronavirus Update

- ▶ Large Employer Vaccination and Testing ETS Withdrawal Eff. 1/26/22
  - ▶ OSHA stands by effectiveness of Vaccination and Testing to ensure worker safety
  - ▶ Will continue use of COVID-19 National Emphasis Program and General Duty Clause
- ▶ Federal Contractors Vaccine Requirement Stayed Eff. 1/21/22 by U.S. District Court
- ▶ OSHA COVID-19 Healthcare ETS Remains in Effect
  - ▶ Agency focusing on making a permanent standard

## NM OSHA Coronavirus Update

- ▶ NM Environment Dept (NM OSHA) Rapid Response Still in Effect
  - ▶ Must report positive cases within 4 hours
  - ▶ State Agencies initiate “Rapid Response” to provide guidance/support to prevent spread beyond infected employee
  - ▶ Failure to comply could result in fines

## NM OSHA Coronavirus Update

### ▶ Notify NMED- NM OSHA

- ▶ Online <https://nmgov.force.com/rapidresponse/s/>
- ▶ Email [NMENV-OSHA@state.nm.us](mailto:NMENV-OSHA@state.nm.us)
- ▶ Phone 505-476-8700
- ▶ Fax 505-476-8734

### ▶ Initial Notification Must Include:

- ▶ Establishment name, address
- ▶ Employer representative name and contact information (phone,email)
- ▶ Number of people employed at location
- ▶ Number of employees who tested positive
- ▶ Date each employee was tested
- ▶ Last date each positive employee was in the establishment
- ▶ Date each positive employee began self-quarantine
- ▶ Employee names and other personally identifiable information **should not** be provided

## New Mexico Healthy Workplaces Act

- ▶ Beginning July 1, 2022, workers in the state of New Mexico will be covered by a new Safe and Sick Time statute under the Healthy Workplaces Act.
- ▶ The statute establishes requirements for virtually all employers with workers in the state of New Mexico to provide up to 64 hours paid sick and safe leave for:
  - ▶ periods of the employee's or a family member's illness or to seek medical diagnosis or care;
  - ▶ safe time for employees and the care of family members who are victims of domestic violence, stalking, or sexual assault; and
  - ▶ for closings of school or businesses to address public health issues.
- ▶ See Handout for Details

## Senate Bill 114 - CA COVID-19 Supplemental Paid Sick Leave (CPSL)

- ▶ SB 114 announced: January 25, 2022
- ▶ Governor Gavin Newsom signed: February 9, 2022
- ▶ Employer's obligation to provide CPSL begins on February 19, 2022
- ▶ Key Provisions:
  - ▶ Applies to employers with 26 or more employees
  - ▶ Retroactive to any time off beginning January 1, 2022
  - ▶ Will expire on September 30, 2022
  - ▶ Maximum potential amount of CPSL is 80 hours for full-time employees

# California: SB 114 Supplemental Paid Sick Leave

## Reasons Employees Can Use, and Duration of, Leave:

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 due to concerns related to COVID-19.
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 prevent the employee from being able to work or telework.
5. Employee is experiencing COVID-19 symptoms and seeking a medical 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 to self-quarantine or isolate by a health care provider due to concerns related to COVID-19.
7. Employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.
8. Employee tests positive or is caring for a family member who tests positive, for COVID-19.

# Reasons Employees can use CA COVID-19 Supplemental Paid Sick Leave (CPSL)

- ▶ The leave hours are broken out into 2 separate "40-hour buckets" of leave:



## One "40-hour bucket"

Employees who are unable to work or telework due to certain reasons related to COVID-19, including 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



## Second "40-hour bucket"

Employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.

- ▶ Employer may require the covered employee to provide documentation of a family member's test result before paying the additional COVID-19 supplemental paid sick leave
- ▶ Employer has no obligation to provide additional COVID-19 supplemental paid sick leave if the employee refuses to provide documentation of a test result

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB114](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB114)

# California: SB 114 Supplemental Paid Sick Leave

## AMOUNT OF AVAILABLE LEAVE:

- ▶ There are 2 separate "40-hour buckets" of paid sick leave:
- ▶ One "40-hour bucket"
  - ▶ Employees who are unable to work or telework due to certain reasons related to COVID-19, including 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
- ▶ Second "40-hour bucket"
  - ▶ Employee, or a family member for whom the covered employee is providing care, tests positive for COVID-19.
    - Employer may require the covered employee to provide documentation of a family member's test result before paying the additional COVID-19 supplemental paid sick leave
    - Employer has no obligation to provide additional COVID-19 supplemental paid sick leave if the employee refuses to provide documentation of a test result
- ▶ [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB114](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB114)



## California: SB 114 Supplemental Paid Sick Leave

- ▶ **Full-Time Employees:** Employees receive 40 hours (for each bank of leave) if either their employer considers them to work full time or, on average, they worked or were scheduled to work at least 40 hours per week in the two weeks preceding the date they took leave.
- ▶ **Part-Time Employees:** Employees with a normal weekly schedule get the number of hours they are normally scheduled to work over one week (for each bank of leave).
  - ▶ Employees who work a variable number of hours and whose tenure is six months or more receive seven times the average number of hours they worked each day in the six months preceding their leave date (for each leave bank).
  - ▶ If they have worked only between 15 days and six months, employers are to use this same calculation but over the employee's entire period of employment.
  - ▶ Employees who have worked 14 days or fewer receive leave hours equal to their total number of hours worked (again, for each leave bank).

## California: SB 114 Supplemental Paid Sick Leave

- ▶ Regarding the second bank, time off for a COVID-19 vaccine or booster shot can be limited by the employer to three days or 24 hours.
  - ▶ This time includes time spent attending an appointment and/or for COVID-19 vaccine or booster shot-related symptoms (for each vaccine/booster).
- ▶ If a health care provider verifies the individual continues to experience symptoms related to the vaccine/booster, more than three days or 24 hours of time off may be available.
- ▶ Because of this “continuing symptoms” exception and the ability of an employee to use leave per vaccine and to care for or assist a family member, an employee could use the entire second bank of leave for obtaining and/or recovering from a COVID-19 vaccine/booster purposes.

## California: SB 114 Supplemental Paid Sick Leave

- ▶ **The Offset:** The amount of paid leave employees already received in 2022 before the law takes effect might qualify as an offset that wholly or partially satisfies an employer's 2022 CPSL obligations.
  - ▶ If an employer pays an employee another benefit for leave taken on or after January 1, 2022, that is payable for the law's covered reasons and compensates employees in an amount equal to or greater than the amount of pay the law requires, an employer may count those hours toward the number of hours of CPSL it must provide an employee under the new law.
  - ▶ Note, however, this must be a supplemental benefit, so employers cannot count paid sick leave employees have used under California's Healthy Workplaces, Healthy Families Act (HWHFA), the pre-COVID paid sick and safe time law, or 2021 CPSL toward their 2022 CPSL obligation.
- ▶ In situations when the employer paid an amount equal to or greater than what 2022 CPSL requires, if an employee requests that 2022 CPSL be applied to the prior absence, the employer must apply (or "credit") 2022 CPSL to that absence, rather than using the other benefit that was applied to the absence.

## California: SB 114 Supplemental Paid Sick Leave

- ▶ When an employee or family member tests positive for COVID-19, employers can require employees to take another diagnostic test on or after the fifth day after the first test and provide documentation of the results.
  - ▶ Importantly, in such a circumstance, an employer must make the test available at no cost to the employee.
- ▶ Employers need not pay more than \$511 for each day an employee uses CPSL, or more than \$5,110 overall. Employees who max out because of the pay caps can use other available paid leave they have (“top up”) so they are fully compensated during the absence.
- ▶ **Employee Obligations when Using Leave:** Employees determine how many CPSL hours they need to use; and whether they will use CPSL or some other paid or unpaid leave benefit to cover an absence.

## California: SB 114 Supplemental Paid Sick Leave

### ▶ OF NOTE:

- ▶ There is no direct tax or financial relief to employers for providing 2022 CPSL.
- ▶ It may be possible to offset this new CPSL obligation with paid leave already provided in 2022.
- ▶ Because 2022 CPSL does not preempt local ordinances, employers may have compliance obligations under the state law and possibly up to four similar – but not identical – local ordinances in Long Beach, Los Angeles (City and County), and Oakland.

### ▶ Covered Employers, Employees and Family Members:

- ▶ CPSL will apply to employers with 26 or more employees and to a number of public entities. The 2022 law does not apply to employers with 25 or fewer employees.
- ▶ CPSL covers all employees and allows employees to use leave to care for family members. **Family member** is defined to include a child, grandchild, grandparent, parent, sibling, or spouse.

## California: SB 114 Supplemental Paid Sick Leave

- ▶ CPSL remains in effect through September 30, 2022. If an employee is using CPSL on September 30, however, and the absence would continue without interruption past September 30, the employee gets to continue using available CPSL for that absence.
- ▶ If Cal-OSHA COVID-19 Emergency Temporary Standards (ETS) or Cal-OSHA Aerosol Transmissible Diseases Standard (ATDS) requires an employer to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure, employers cannot require an employee to first exhaust CPSL

## California: One Other HR Thing to Remember:

### ▶ CalSavers Retirement Savings Program – Effective 6/30/2022

- ▶ Employers with at least five employees that do not offer a private workplace retirement savings plan (i.e., qualified employers) are required to facilitate optional employee contributions, through post-tax payroll deductions, to individual retirement accounts (IRAs) run by the state.
- ▶ Qualified employers are required to either offer a private IRA plan or provide their employees with access to CalSavers.



# Questions



# Disclaimer

*This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.*

*Please visit our website at [www.pomsassoc.com](http://www.pomsassoc.com) or call us at 818-449-9300*