



February 3, 2022

The Honorable Gavin Newsom  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

The Honorable Nancy Skinner  
Chair, Senate Budget and Fiscal Review  
1021 O Street, Room 8630  
Sacramento, CA 95814

The Honorable Philip Ting  
Chair, Assembly Budget Committee  
1021 O Street, Room 8230  
Sacramento, CA 95814

Subject: AB 84 (Committee on Budget) – Employment: COVID-19: Supplemental Paid Sick Leave  
**CONCERNS** [As Amended February 2, 2022]  
Set for hearing February 3, 2022 – Senate Budget and Fiscal Review Committee

Dear Governor Newsom and Chairs Skinner and Ting:

The California State Association of Counties, the League of California Cities, the California Special Districts Association, the Rural Counties Representatives of California, the Urban Counties of California, the California Association of Joint Powers Authorities and the Public Risk Innovation, Solutions, and Management must regretfully submit our **CONCERNS** regarding **AB 84 (Committee on Budget)**, as amended on February 2, 2022. AB 84 would authorize up to 80 hours of supplemental paid sick leave, beginning January 1, 2022, until September 30, 2022, for covered employees who are unable to work or telework due to specific reasons related to COVID-19. These 80 hours would provide that the total number of hours of COVID-19 supplemental paid sick leave to which a covered employee is entitled be 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.

Although the State of California continues to have unprecedented budget surpluses, local governments continue to struggle both fiscally and administratively to deliver services to their constituents. Each change or shift in direction comes with substantial information technology costs and administrative burdens – all while labor shortages continue to drive delays in critical services. As California approaches the third year of the

COVID-19 pandemic, employers have spent substantial time and funding to meet the requirements of state law and Cal/OSHA regulations.

While our organizations appreciate the need to ensure employees have access to leave for COVID-19, we have concerns with some of the language contained in AB 84 that creates even more administrative burdens and costs to public employers.

To that end, we are asking that the language proposed in AB 84 reflect what was in place in last year's SB 95 with respect to leave prioritization as specified below, and is currently in place through the Revised Cal/OSHA COVID-19 Emergency Temporary Standards, effective January 14, 2022 (ETS).

### **Leave Prioritization**

The current proposed language in section 248.6(b)(5) reverses the previously applied language in SB 95 [§248.2(b)(5)] that allowed an employer to require the use of COVID-19 supplemental paid sick leave before use of any other available forms of leave. This will create confusion and complications in systems that have already administered this leave type, impacting the administration of supplemental paid sick leave when employees would already be subsequently covered under workplace exposures following usage of this leave. Additionally, this requires conforming changes in (248.6(b)(2)(G)).

- *Current:* "An employer may 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. . . ."
- *Proposed:* "Notwithstanding any other provision in this section, in order to satisfy the requirement to maintain an employee's earnings when an employee is excluded from the workplace due to COVID-19 exposure under the Cal-OSHA COVID-19 Emergency Temporary Standards at Sections 3205 through 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, an employer may require a covered employee to first exhaust their COVID-19 supplemental paid sick leave under this section."

### **Testing**

The proposed testing language in section 248.6(b)(2)(D)(ii) changes the currently used COVID-19 ETS language and leaves additional ambiguity for interpretation. This creates the potential for unnecessary friction between employers and employees regarding how testing should be delivered and administered. All testing language should mirror language and policies already implemented under the Cal/OSHA COVID-19 ETS. A small distinction can substantially change interpretations for employers and employees unnecessarily.

- *Current:* "The employer shall make such a test available at no cost to the employee."
- *Proposed:* "The employer shall make COVID-19 testing available at no cost to the employee."

### **Implementation & Retroactivity**

Our coalition proposes allowing an implementation and retroactivity application grace period under 248.6(e) of at least 30 days. Employers are under tremendous strain in ensuring employee safety, coordinating vaccines, testing, and contact-tracing while attempting to apply ever-changing directions during this period. Public employers have thousands of employees who may have taken leave during this period and therefore need appropriate time to implement retroactivity without penalization. Allowing an implementation and retroactivity grace period will enable employers to appropriately build, modify, and plan for this new leave implementation. Rushing this process with the new thresholds and qualifications for the leave could detrimentally impact employees down the road if inadvertent mistakes are made while trying to implement

this modified application too quickly. Further, 248.6(e) should be modified to state that the 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, *and proof of eligibility has been provided to the employer.*

Additionally, we propose including a June/July date that requires employers to trigger employers on retroactivity – allowing employers appropriate time to calculate, apply, and notice the employee of leave balances prior to the supplemental paid sick leave expiration will allow employees to be better informed on where their actual leave balances stand.

**Notification of Leave Balance**

In section 248.6(d), employers are required to notify employees of how much COVID-19 Supplemental Paid Sick Leave has been used. This creates a substantial burden for many employers if needed for every pay period and could be extremely costly to update information technology systems, software, and reporting. We would ask that this notice be provided one-time and upon subsequent request by the employee.

Public agencies have spent the last 24 months and more ensuring that public health and wellbeing are at the forefront of our response to COVID-19, including going above and beyond federal and state guidelines for keeping our workforce safe; we ask the Legislature to consider amending AB 84 to ease administrative and cost hurdles to local government employers.

Sincerely,



Jen Hamelin  
Public Risk Innovation, Solutions,  
And Management (PRISM)



Johnnie Pina  
League of California Cities



Aaron Avery  
California Special Districts Association



Ryan Souza  
California State Association of Counties



Faith Lane Borges  
California Association of Joint Powers Authorities



Jean Kinney Hurst  
Urban Counties of California



Sarah Dukett  
Rural County Representatives of California

Cc: Senate Budget and Fiscal Review Committee  
Assembly Budget Committee  
Stuart Thompson, Chief Deputy Legislative Secretary, Office of Governor Gavin Newsom