COVID SUPPLEMENTAL PAID SICK LEAVE CHEATSHEET

Threshold question: Is the employee out with Covid because of a work-related exposure?

- If YES: Proceed down the Cal-OSHA path
- If NO: Proceed down the SB 114 path

Cal-OSHA Emergency Temporary Standards

- Applies if industrial exposure to Covid
- Applies to all ERs in CA (no employee # cap)
- ER is to pay the employee as if they are still there
    o No limitation on # of hours
    o No monetary cap
    o Same benefits as if they're still there
- If the ER has a sick leave plan that's greater than the statutory minimum of 3 days/year, than the ER can require EE to use days from that.
    o But if ER doesn't have a paid sick leave plan, then they cannot require employee use their three sick days under LC 246.
- If the Covid sick leave pay extends an unusually long time, have to see if it is an accepted Covid claim and if TD kicks in.
    o If TPA denies claim due to finding that it's nonindustrial, then ER isn't liable for Covid sick pay under Cal-OSHA citing same reason
    o If TPA accepts claim, then TD is due and TPA can consider reimbursing ER
    o The Cal-OSHA Covid sick pay counts as a credit against any benefits owed under SB 114
- No expiration date at this time

SB 114

- Applies if nonindustrial exposure to Covid
- Applies to ERs with 26 or more EEs
- When does it apply?
    o EE quarantining, EE has symptoms and caring for self, EE taking care of sick relative, EE taking care of child whose school/daycare closed due to Covid, EE getting vaccinated, EE getting relative vaccinated

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- If off work due to vaccination, ER can limit Covid sick leave to 3 days/24 hours. If additional time needed, doctor's note needed.
- If sick or taking care of sick relative:
    o First 40 hours = no proof needed
    o Can get additional 40 hours by showing ER positive test
        ▪ Positive test for sick EE
        ▪ Positive test for family member
        ▪ (SB 114 says ER is entitled to test information – no privacy violations.)
- Can't exhaust PTO or regular sick leave first
- Retroactive to 1/1/22
    o If EE wants retro sick leave prior to 2/19/22, then they:
        ▪ Must notify ER verbally or in writing
- Amount of pay capped at $511/day for 10 days
- ER must notify EEs how much sick leave an employee has used and how much they have left
- Already paid Cal-OSHA sick leave? Cal-OSHA sick leave can act as a credit towards SB 114 sick leave
- Expires on 9/30/22

The Cal-OSHA regulations are emergency regulations, whereas SB 114 created Labor Code statutes 248.6 and 248.7. Both are very long and can create confusion about how they interact. Generally speaking, we recommend that employers pay Covid sick leave first and sort out the details later – this will cover the majority of scenarios under both SB 114 and Cal-OSHA and keep employees happy, thus reducing litigated workers' compensation claims. If you have questions about Covid supplemental paid sick leave, please feel free to contact Bradford and Barthel's Covid Response Team at covid@bradfordbarthel.com.