



**August 29, 2022**

## **California Construction Employers Receive Special Treatment in COVID-19 Paid Leave Relief Package - The Good, The Bad and The Ugly of the Program**

The California legislature is poised to pass budget trailer bill language ([AB 152](#)) to implement the COVID-19 Supplemental Paid Sick Leave Relief Grant Program that we have been advocating for over the past six months. The bill will be sent to the Governor for his signature in the next few days. Securing funding and launching this program is a major achievement by the industry. The grassroots and direct lobbying efforts we deployed had a significant effect in providing specific relief for construction employers. While not perfect, the program is the positive result of our contractor's efforts. As with all major legislative endeavors, the process necessitates negotiation and compromise. Many additional industries engaged in the negotiations with differing priorities after we had secured the original program funding in the CA state budget, which was signed by the Governor on June 13<sup>th</sup>.

To be clear, we worked tirelessly to achieve a high level of success for the industry on this issue and the industry should be proud of the effort it put forward. We must remember that we started with nothing but a paid leave mandate in March of this year and now, while we too are disappointed that we couldn't assist our largest contractors, we have secured real relief for many of our members.

Below is a summary of "The Good, The Bad and The Ugly" of the program.

### **The Good:**

Due to the specific efforts of the union construction industry, California will be implementing a quarter of a billion-dollar COVID-19 Supplemental Paid Sick Leave Relief Grant Program to help employers recoup cost associated with providing mandatory paid leave under the COVID-19 Supplemental Paid Sick Leave (SPSL) program. An additional \$70 million dollars may be added to the grant program if federal relief funds are secured by the state. Qualifying employers will be eligible to be reimbursed up to \$50,000.00 for costs encored to provide COVID-19 SPSL, pursuant to Sections 248.6 and 248.7 of the California Labor Code. In addition, those labor code sections will be updated, to the benefit of employers, as it relates to testing. The program details are as follows:

- Secured, at a minimum, \$250 million for a grant program to help employers recoup cost associated with providing mandatory paid COVID-19 leave.
- The grant program will be administered by the California Office of Small Business Advocate within the Governor's Office of Business and Economic Development (GO-Biz).
- Qualifying employers will be eligible to receive up to \$50,000.
- Any grant funds received by an employer will not be subject to state tax.
- Construction employers are specifically provided expanded qualification status based on "core employees." (More on that below)

- Under existing law, if an employee is receiving COVID-19 SPSL due to a positive test, then an employer may require the employee to submit to a second diagnostic test on or after the fifth day following the first positive test, and may require the employee to provide documentation of those results. AB 152 further authorizes the employer to require, if that second diagnostic test for COVID-19 is also positive, the employee to submit to a third diagnostic test within no less than 24 hours. Finally, the measure specifies that the employer has no obligation to provide COVID-19 SPSL to any employee who refuses to submit to these aforementioned tests.

### **The Bad:**

During negotiations, both the Governor's office and the California Chamber of Commerce were extremely concerned with oversubscription of the COVID-19 Supplemental Paid Sick Leave Relief Grant Program. As such, both pushed to limit grant access to employers with less than 50 employees. Employers with 25 or less employees are not subject to the requirement to provide the paid leave. While we pushed back hard on any suggested eligibility limit, the Administration's fear that the program money would run out in the first days that the grants became available was insurmountable. In the end, unfortunately only employers with between 26 to 49 employees will qualify for access to the grant program.

It is important to note that California construction employers were the only employers who were provided a variance when calculating the less than 50 employee threshold.

While the grant program contains the less than 50 employee qualifier to access grant funds for all other employers in the state, we were able to secure industry specific language to allow construction employers to count only "core employees" towards the less than 50 employee threshold. That exemption reads as follows:

*"For purposes of calculating the number of employees to determine if the employer meets the 26 to 49 employees requirement for access to the grant program, an employer covered by Industrial Welfare Commission Order No. 16-2001, shall calculate their number of employees as the number of full-time employees that have worked for the employer, without any break in employment, for the past 24 months."*

This language should significantly increase the number of contractors who will qualify for access to the grant program.

### **The Ugly:**

A primary focus of the industry efforts surrounding the promotion of a COVID-19 Supplemental Paid Sick Leave Relief Grant Program was to also thwart any attempt to implement another round of COVID-19 SPSL. While we have been successful in that effort, the budget language that establishes the grant program also extends the sunset for the current COVID-19 SPSL from September 30, 2022 to December 31, 2022.

The industry is and continues to be opposed to any extension of the existing or implementation of a new COVID-19 SPSL.

The hostile language that the California Labor Federation placed into AB 152, in the eleventh hour, to extend the current COVID-19 SPSL is not a reset of the program. Any employee who has already exhausted their 80 hours under the current COVID-19 SPSL is not eligible for any additional paid leave.