

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **House Bill 4810**

BY DELEGATE YOUNG

[Introduced February 15, 2022; Referred to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §20-17-1, all related to providing Covid-19 supplemental sick leave; defining  
3 terms; establishing entitlement to Covid-19 supplemental sick leave;

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 17. COVID-19 SUPPLEMENTAL SICK LEAVE.**

**§20-17-1. COVID-19 Supplemental Sick Leave.**

1 (a) As used in this section:

2 (1) "Covered employee" means an employee who is unable to work or telework for an  
3 employer because of a reason listed under paragraph (1) of subdivision (b).

4 (2) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave  
5 provided pursuant to this section.

6 (3) "Employer" means any person employing another under any appointment or contract  
7 of hire and includes the state, political subdivisions of the state, and municipalities, that employs  
8 more than 5 employees.

9 (4) "Family member" means any of the following:

10 (A) A child, which for purposes of this article means a biological, adopted, or foster child,  
11 stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of  
12 a child is applicable regardless of age or dependency status.

13 (B) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee  
14 or the employee's spouse or registered domestic partner, or a person who stood in loco parentis  
15 when the employee was a minor child.

16 (C) A spouse.

17 (D) A domestic partner.

18 (E) A grandparent.

19 (F) A grandchild.

20 (G) A sibling.

21 (b) A covered employee shall be entitled to COVID-19 supplemental paid sick leave as  
22 follows:

23 (1) An employer shall provide COVID-19 supplemental paid sick leave to each covered  
24 employee if that covered employee is unable to work or telework due to any of the following  
25 reasons:

26 (A) The covered employee is subject to a quarantine or isolation period related to COVID-  
27 19 as defined by an order or guidance of the Department of Health and Human Resources, Public  
28 Health, the federal Centers for Disease Control and Prevention, or a local public health officer  
29 who has jurisdiction over the workplace. If the covered employee is subject to more than one of  
30 the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick  
31 leave for the minimum quarantine or isolation period under the order or guidance that provides  
32 for the longest such minimum period.

33 (B) The covered employee has been advised by a health care provider to isolate or  
34 quarantine due to COVID-19.

35 (C) The covered employee is attending an appointment for themselves or a family member  
36 to receive a vaccine or a vaccine booster for protection against COVID-19, subject to the limitation  
37 in clause (ii) of subparagraph (D).

38 (D)(i) The covered employee is experiencing symptoms, or caring for a family member  
39 experiencing symptoms, related to a COVID-19 vaccine or vaccine booster that prevent the  
40 employee from being able to work or telework.

41 (ii) For each vaccination or vaccine booster, an employer may limit the total COVID-19  
42 supplemental paid sick leave to 3 days or 24 hours unless the employee provides verification from  
43 a health care provider that the covered employee or their family member is continuing to  
44 experience symptoms related to a COVID-19 vaccine or vaccine booster. The 3-day or 24-hour  
45 limitation applied to each vaccine or vaccine booster includes the time used under subparagraph

46 (C) to get the vaccine or vaccine booster.

47 (E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical  
48 diagnosis.

49 (F) The covered employee is caring for a family member who is subject to an order or  
50 guidance described in subparagraph (A) or who has been advised to isolate or quarantine, as  
51 described in subparagraph (B).

52 (G) The covered employee is caring for a child, as in subsection (a), whose school or place  
53 of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

54 (2) A covered employee shall be entitled to the following number of hours of COVID-19  
55 supplemental paid sick leave:

56 (A) A covered employee is entitled to 80 hours of COVID-19 supplemental paid sick leave,  
57 if the covered employee satisfies either of the following criteria:

58 (i) The employer considers the covered employee to work full time.

59 (ii) The covered employee worked or was scheduled to work, on average, at least 40 hours  
60 per week for the employer in the two weeks preceding the date the covered employee took  
61 COVID-19 supplemental paid sick leave.

62 (B) A covered employee who does not satisfy the criteria in subparagraph (A) is entitled  
63 to an amount of COVID-19 supplemental paid sick leave as follows:

64 (i) If the covered employee has a normal weekly schedule, the total number of hours the  
65 covered employee is normally scheduled to work for the employer over one week.

66 (ii) If the covered employee works a variable number of hours, seven times the average  
67 number of hours the covered employee worked each day for the employer in the six months  
68 preceding the date the covered employee took COVID-19 supplemental paid sick leave. If the  
69 covered employee has worked for the employer over a period of fewer than six months but more  
70 than seven days, this calculation shall instead be made over the entire period the covered  
71 employee has worked for the employer.

72 (iii) If the covered employee works a variable number of hours and has worked for the  
73 employer over a period of seven days or fewer, the total number of hours the covered employee  
74 has worked for that employer.

75 (C) (i) A covered employee is entitled to additional COVID-19 supplemental paid sick leave  
76 in an amount not to exceed that which the covered employee was entitled to under subparagraph  
77 (A), (B), or (C), as applicable, if the covered employee, or a family member for whom the covered  
78 employee is providing care, tests positive for COVID-19.

79 (ii) If the employee tested positive as described in clause (i), an employer may require the  
80 employee to submit to a diagnostic test on or after the fifth day after the test described in clause  
81 (i) was taken and provide documentation of those results. The employer shall make such a test  
82 available at no cost to the employee.

83 (iii) If the employee requests to use additional leave pursuant to this subparagraph  
84 because a family member for whom they are providing care tests positive for COVID-19, the  
85 employer may require that the employee provide documentation of that family member's test  
86 results before paying the additional leave.

87 (iv) The employer has no obligation to provide additional COVID-19 supplemental paid  
88 sick leave under this subparagraph for an employee who refuses to provide documentation of the  
89 results of the test described in clause (i) upon the request of the employer.

90 (v) The employee does not need to exhaust the leave to which they are entitled under  
91 subparagraph (A), (B), or (C), before using the additional leave provided for in this subparagraph.

92 (D) The total maximum amount of COVID-19 supplemental paid sick leave a covered  
93 employee is entitled to pursuant to this section shall not exceed 80 hours for the period between  
94 January 1, 2022, and September 30, 2022.

95 (E) The total number of hours of COVID-19 supplemental paid sick leave to which a  
96 covered employee is entitled pursuant to subparagraph (A), (B), or (C), and the total number of  
97 hours of additional COVID-19 supplemental paid sick leave to which a covered employee is

98 entitled pursuant to subparagraph (D), shall be in addition to any paid sick leave that may be  
99 available to the covered employee.

100 (F) A covered employee may determine how many hours of COVID-19 supplemental paid  
101 sick leave to use, up to the total number of hours to which the covered employee is entitled  
102 pursuant to subparagraph (A), (B), (C), or (D). The employer shall make COVID-19 supplemental  
103 paid sick leave available for immediate use by the covered employee, upon the oral or written  
104 request of the covered employee to the employer.

105 (G) An employer is not required to provide a covered employee more than the total number  
106 of hours of COVID-19 supplemental paid sick leave to which the covered employee is entitled  
107 pursuant to subparagraph (A), (B), or (C), or more than the total number of hours of additional  
108 COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to  
109 subparagraph (D).

110 (3)(A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a  
111 rate equal to the following:

112 (i) For nonexempt covered employees, by one of the following:

113 (I) Calculated in the same manner as the regular rate of pay for the workweek in which  
114 the employee uses paid sick time, whether or not the employee actually works overtime in that  
115 workweek.

116 (II) Calculated by dividing the employee's total wages, not including overtime premium  
117 pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the  
118 prior 90 days of employment; provided that, for nonexempt employees paid by piece rate,  
119 commission or other method that uses all hours to determine the regular rate of pay, total wages,  
120 not including overtime premium pay, shall be divided by all hours, to determine the correct amount  
121 of COVID-19 supplemental paid sick leave under this subdivision.

122 (ii) COVID-19 supplemental paid sick leave for exempt employees shall be calculated in  
123 the same manner as the employer calculates wages for other forms of paid leave time.

124 (B) Notwithstanding subparagraph (A), a covered employee who is entitled to an amount  
125 of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be  
126 compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay  
127 to which the covered employee would be entitled as if the covered employee had been scheduled  
128 to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

129 (C) Notwithstanding subparagraph (A) or (B), an employer shall not be required to pay  
130 more than five hundred eleven dollars (\$511) per day and five thousand one hundred ten dollars  
131 (\$5,110) in the aggregate to a covered employee for COVID-19 supplemental paid sick leave  
132 taken by the covered employee unless federal legislation is enacted that increases these amounts  
133 beyond the amounts that were included in the Emergency Paid Sick Leave Act established by the  
134 federal Families First Coronavirus Response Act (Public Law 116-127), in which case the new  
135 federal dollar amounts shall apply to this section as of the date the new amounts are applicable  
136 under the federal law. Nothing in this subparagraph shall prevent a covered employee who has  
137 reached the maximum amounts, as set forth herein, from choosing to utilize other paid leave that  
138 is available to the covered employee in order to fully compensate the covered employee for leave  
139 taken.

140 (4) An employer shall not require a covered employee to use any other paid or unpaid  
141 leave, paid time off, or vacation time provided by the employer to the covered employee before  
142 the covered employee uses COVID-19 supplemental paid sick leave or in lieu of COVID-19  
143 supplemental paid sick leave.

144 (c) Notwithstanding subdivision (b), if an employer pays a covered employee another  
145 supplemental benefit for leave taken on or after January 1, 2022, that is payable for the reasons  
146 listed in paragraph (1) of subdivision (b) and that compensates the covered employee in an  
147 amount equal to or greater than the amount of compensation for COVID-19 supplemental paid  
148 sick leave to which the covered employee is entitled as set forth under paragraph (3) of  
149 subdivision (b), then the employer may count the hours of the other paid benefit or leave towards

150 the total number of hours of COVID-19 supplemental paid sick leave that the employer is required  
151 to provide to the covered employee under paragraph (2) of subdivision (b). For purposes of the  
152 foregoing, the other supplemental benefit for leave taken that may be counted does not include  
153 paid sick leave to which the covered employee is otherwise entitled, but may include paid leave  
154 provided by the employer pursuant to any federal or local law in effect or that became effective  
155 on or after January 1, 2022, if the paid leave is provided to the covered employee under that law  
156 for any of the same reasons set forth in paragraph (1) of subdivision (b).

157 (d) In addition to other remedies as may be provided by the laws of this state or its  
158 subdivisions, including, but not limited to, the remedies available to redress any unlawful business  
159 practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business  
160 and Professions Code, the Labor Commissioner shall enforce this section. For purposes of  
161 enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply  
162 as follows:

163 (1) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid  
164 sick leave constitutes wages under subdivisions §20-5A-1 et seq of this code.

165 (2) COVID-19 supplemental paid sick leave shall be set forth separately from paid sick  
166 days. The employer shall provide an employee with written notice that sets forth the amount of  
167 COVID-19 supplemental paid sick leave that the employee has used through the pay period in  
168 which it was due to be paid on either the employee's itemized wage statement or in a separate  
169 writing provided on the designated pay date with the employee's payment of wages. The employer  
170 shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.  
171 This requirement is not enforceable until the next full pay period following the date that this section  
172 takes effect.

173 (3) Section 249 applies to COVID-19 supplemental paid sick leave.

174 (4) By seven days after the date of enactment of this section, the Labor Commissioner  
175 shall make publicly available a model notice of the covered employee's rights under this section.



176 Only for purposes of COVID-19 supplemental paid sick leave, if an employer's covered  
177 employees do not frequent a workplace, the employer may satisfy this notice requirement by  
178 disseminating notice through electronic means, such as by electronic mail.

179 (e) (1) The requirement to provide COVID-19 supplemental paid sick leave as set forth in  
180 this section shall take effect 10 days after the date of enactment of this section, at which time the  
181 requirements shall apply retroactively to January 1, 2022.

182 (2) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this  
183 section applies retroactively to January 1, 2022, in order to protect the economic well-being of  
184 covered employees who took leave for the reasons listed in paragraph (1) or (2) of subdivision  
185 (b) beginning on or after January 1, 2022, as all the requirements in the Emergency Paid Sick  
186 Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-  
187 127) expired before the effective date of this section. An employer may require a covered  
188 employee to provide documentation of a positive COVID-19 diagnostic test during the relevant  
189 period if an employee requests retroactive payment of the COVID-19 supplemental paid sick  
190 leave described in clause (i) of subparagraph (D) of paragraph (2) of subdivision (b).

191 (A)(i) For any such leave taken, if the employer did not compensate the covered employee  
192 in an amount equal to or greater than the amount of compensation for COVID-19 supplemental  
193 paid sick leave to which the covered employee is entitled as set forth under paragraph (3) of  
194 subdivision (b), then upon the oral or written request of the employee, the employer shall provide  
195 the covered employee with a retroactive payment that provides for such compensation.

196 (ii) For any such leave taken, if the employer did compensate the covered employee in an  
197 amount equal to or greater than the amount of compensation for COVID-19 supplemental paid  
198 sick leave to which the covered employee is entitled as set forth under paragraph (3) of  
199 subdivision (b), then upon the oral or written request of the employee, such employee should be  
200 credited for any leave hours used for COVID-specific leave purposes, and the employer should  
201 be credited for providing those hours as COVID-19 supplemental paid sick leave.

202 (B) For any such retroactive payment, the number of hours of leave corresponding to the  
203 amount of the retroactive payment shall count towards the total number of hours of COVID-19  
204 supplemental paid sick leave that the employer is required to provide to the covered employee  
205 under paragraph (2) of subdivision (b).

206 (C) This retroactive payment shall be paid on or before the payday for the next full pay  
207 period after the oral or written request of the covered employee. The retroactive payment shall be  
208 reflected on the written notice required by paragraph (2) of subdivision (d) for the corresponding  
209 pay period.

210 (f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this  
211 section shall remain in effect through September 30, 2022, except that a covered employee taking  
212 COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be  
213 permitted to take the full amount of COVID-19 supplemental paid sick leave to which the covered  
214 employee otherwise would have been entitled under this section.

215 (g) The provisions of this section are severable. If any provision of this section or its  
216 application is held invalid, that invalidity shall not affect other provisions or applications that can  
217 be given effect without the invalid provision or application.

NOTE: The purpose of this bill is to provide Covid-19 supplemental sick leave to covered employees in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.