



Labor, Employment & Employee Benefits

New York State Paid Sick Leave and COVID-19

Syracuse ♦ Ithaca ♦ New York City

March 2020

New York State is acting swiftly to respond to the COVID-19 pandemic. On March 18, 2020, Governor Cuomo signed a bill into law that provides paid sick leave to employees directly impacted by COVID-19. The law, which takes effect immediately, requires employers to provide paid sick leave to employees when they are subject to an order of either mandatory or precautionary quarantine or isolation by any governmental entity duly authorized to issue such an order due to COVID-19 ("Quarantine Order"). Employers must provide paid leave without the loss of an employee's accrued sick leave.

Paid Sick Leave Requirements:

For any employee subject to a quarantine order, employers in these three categories must do the following:

1. **Employers with 10 or fewer employees as of Jan. 1, 2020 and a net income of less than \$1 million in the previous tax year:** must provide **unpaid** sick leave and job protection for the duration of a Quarantine Order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the duration of the Quarantine Order.
2. **Employers with 10 or fewer employees as of Jan. 1, 2020 and a net income of greater than \$1 million in the previous tax year and employers with 11-99 employees:** must provide at least **5** days of **paid** sick leave, job protection for the duration of the Quarantine Order, and guarantee workers access to Paid Family Leave and disability benefits (short-term disability) for the duration of the quarantine order.
3. **Employers with 100 or more employees as of Jan. 1, 2020 and public employers (regardless of number of employees):** must provide employees with at least **14** days of **paid** sick leave for the duration of the Quarantine Order and guarantee job protection for the duration of the quarantine order. Public employers must compensate employees at their regular rate of pay for those regular work hours during which the employee is absent.

Exceptions to Paid Sick Leave:

The law provides an important exception for employees who travel to high-risk areas despite warnings from the Center for Disease Control ("CDC"). An employer does **not** need to provide paid sick leave to any employee subject to a Quarantine Order when the employee has returned to the U.S. after traveling to a country for which the CDC has issued a level two or three travel health notice and the travel was not directed by the employer, provided that the employee received notice of the travel health notice prior to such travel. In this scenario, the employee is only eligible to use accrued leave provided by the employer, or if they do not have enough accrued leave, then unpaid sick leave for the duration of the Quarantine Order.

The law also does not apply to employees deemed asymptomatic or not yet diagnosed with any medical condition, and that are physically able to work while under Quarantine Order through remote access.

Paid Family Leave and Disability Benefits:

Employees with less than 100 employees are eligible for Paid Family Leave benefits ("PFL") and disability benefits. PFL is available to any employee subject to a Quarantine Order, or to provide care for a minor dependent child of the employee who is subject to a Quarantine Order. Disability benefits are available for any employee unable to perform their regular duties as a result of the Quarantine Order.

Continued on next page



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Eligible employees can receive PFL and disability benefits concurrently, starting on the first full day of an unpaid period during the Quarantine Order. The law limits the benefits to a maximum of \$840.70 in PFL and \$2,043.92 in disability benefits per week.

Employee Job Protection:

Upon return to work following leave, the employee must be restored to the position held prior to any leave taken with the same pay and other terms and conditions of employment. Employers and their agents also may not discharge, threaten, penalize or discriminate or retaliate against an employee because an employee has taken leave pursuant to this law.

Unemployment Benefits:

If an employer closes due to a reason related to COVID-19 or due to a mandatory order of a government entity due to COVID-19, employees will not be subject to any waiting period for a claim of unemployment benefits and may apply immediately.

Federal Sick Leave Law:

The New York law provides that if the federal government provides sick leave and/or employee benefits for employees related to COVID-19, then the benefits outlined above will not be available to employees, unless they would provide benefits in excess of the benefits provided by the federal government, in an amount that is the difference between benefits available under this law and benefits provided by the federal government.

On March 19, 2020, President Trump signed the First Coronavirus Response Act, which provides for emergency paid sick leave and emergency paid unemployment benefits, but this federal law does not become effective until April 2, 2020. Prior to April 2, 2020, our firm will issue another legal alert which will summarize the new federal law and highlight its impact on New York law.

Should you have any questions regarding this new law, we recommend that you contact counsel to ensure that your business adheres to this new legislation.

If we can provide you with additional insight and information regarding changing employment laws related to the current coronavirus pandemic and how to address internal issues at your business, please contact :



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Bousquet Holstein PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



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