



The
Business
Council

Labor & Human Resources Committee Update

New York State Emergency Paid Sick Leave Law

The new state law includes provisions for employees (or employees caring for minor children) under a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any government entity duly authorized to issue such an order due to COVID-19. These provisions are effective immediately. If you are an employer of 99 or less your immediate obligations are to:

- Notify employees of the availability of leave as described below (no template for this notification has yet been provided)
- To provide job protected leave as described below
- Provide forms required for employee to apply for Paid Family Leave (PFL) and New York State Short Term Disability (DBL)
- Employers of 100 or more only need to provide paid sick leave as required.

Provisions of the New York law include:

- Employers of 10 or fewer as of January 1, 2020 must provide **unpaid**, job protected sick time during an employee's period of ordered quarantine or isolation, except those employers with net income of more than \$1 million, which must provide five days of **paid** sick leave
- Employers of 11 to 99 must provide five days of **paid** sick leave
- Employers of 100 or more must provide up to fourteen days of **paid** sick leave
- Public employers must provide at least fourteen days of **paid** sick leave
- Benefits **would not** be available to employees deemed asymptomatic or not yet diagnosed with any medical condition and is physically able to work, through remote access or other means
- NOTE: Such sick leave shall be provided without loss of an employee's accrued sick leave. That is, this leave is in addition to whatever leave is already provided by the employer and is to be used first.

This leave is job protected and employees are, interestingly, not eligible to use this leave if the employee is returning from personal travel to one of the destinations on the CDC travel advisory list. These employees would be able to use any available employer provided leave time or, absent that, unpaid sick leave for the duration of the quarantine.

For employers of 99 employees or less, should an employee's period of quarantine or isolation extend beyond available sick time as described above, the employee would be able to apply for Paid Family Leave (PFL) **and** New York State Short Term Disability (DBL) concurrently – as you know this is not possible under current law. Benefit amounts would be a combination of payments from PFL and from DBL up to 100% of an employee's average weekly wage for those employees earning up to \$150,000 per year. For example:

- An employee making \$150,000 per year (\$2,884.62 per week) may be eligible for:
 - \$840.70 payment from PFL (60% of average weekly wage to the 2020 maximum benefit amount), and
 - \$2,043.92 payment from DBL (a significant – temporary increase over the current maximum of \$170/wk.)

Additionally, there is no waiting period for the commencement of DBL payments under these circumstances. PFL/DBL benefits may also be used to care for a dependent minor child under such a mandatory quarantine or isolation order; this provision does not apply in cases where the child's school is closed and requires daycare.

New Federal Leave Laws

The Senate passed and the President signed the Families First Coronavirus Response Act last night that includes paid sick leave and an expanded family and medical leave act for most employers in the state. The president signed the legislation on the evening of March 18, which means the leave provisions will go into effect on April 2.

This act includes many provisions which apply to employers, such as paid sick leave for employees impacted by COVID-19 and those serving as caregivers for individuals with COVID-19. There are two provisions providing paid leave to employees forced to miss work because of the COVID-19 outbreak - an emergency expansion of the Family Medical Leave Act (FMLA) and a new federal paid sick leave law.

Emergency Paid Sick Leave Act

Provisions include:

Reasons for Paid Sick Leave

This Act now allows an eligible employee to take paid sick leave because the employee is:

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns
3. Experiencing COVID-19 symptoms and seeking medical diagnosis
4. Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or

6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Of note, caring for another who is subject to an isolation order or advised to self-quarantine as described above is no longer limited to just family members.

Eligibility

- This provision requires employers with fewer than 500 employees to provide full-time employees (regardless of the employee's duration of employment prior to leave) with 80 hours of **paid** sick leave at the employee's regular rate (or two-thirds the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed above).
- Provides an exception for employers who are healthcare providers or emergency responders at their election.
- Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.
- This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.
- This act takes effect April 2, 2020 and remains in effect until December 31, 2020.

Tax Credits for Paid Sick and Paid Family Leave

The federal bill provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.

Specifically, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter.

Similarly, employers are entitled to a refundable tax credit equal to 100% of the qualified family leave wages paid by employers for each calendar quarter in accordance with the Emergency Family and Medical Leave Expansion Act. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

NOTE: New York law requires that, in the event of federal action on the coronavirus, employers apply the plan most generous to employees. In most cases, New York State's new emergency paid sick leave will be more generous for employees subject to quarantine or isolation by a public health official or have a minor child quarantined as described below. In that case, employers should provide benefits provided by that law. In the case of an employee requiring leave to care for a child whose school has

closed due to the coronavirus, or other applicable situations, the Federal law would be most generous and would be in effect.