

FYI[®] Alert

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New York releases guidance on COVID-19 leave

On March 18, the New York law requiring employers to provide sick leave and job protection to employees under quarantine or isolation orders as a result of COVID-19 went into effect. The state has posted FAQs that clarify some of the law's provisions.

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Background

On March 18, 2020, Governor Andrew M. Cuomo signed into law a bill ([S.8090](#)) requiring New York employers to provide job-protected sick leave to employees under quarantine or isolation orders as a result of COVID-19, and expanding eligibility for state paid family leave and disability benefits. The law went into effect immediately. (See our [March 24 FYI](#).) The state has now released [FAQs](#) that provide helpful clarifications for employers.

FAQs

Key takeaways from the FAQs are highlighted below.

Days of leave and amount of payment

The FAQs clarify that the number of paid days of COVID-19 leave is calendar — not work — days. However, employees are only entitled to receive the amount of pay they would have received if they had continued to work for the applicable paid leave period (five or 14 days). Thus, an employee who is entitled to 14 days of leave under the law and normally works a five-day week would be paid for 10 work days.

Buck comment: The amount of leave employers are required to provide depends on their size as of January 1, 2020. Because the FAQs do not address whether employer size is determined by the number of employees in New York or nationwide, further guidance is needed.

Payment schedule

Paid sick leave payments must be made in accordance with New York's normal wage payment requirements and should be made in the paycheck for the corresponding pay period in which leave is taken.

Repayment of benefits

Employees are not required to repay any benefits they receive during COVID-19 quarantine leave.

Retroactive leave

Quarantine leave is available retroactively. Employees may take quarantine leave if they are still under a mandatory or precautionary order of quarantine or isolation even if the order was issued prior to the enactment of the COVID-19 leave law.

Existing sick leave or other PTO accruals

Employers cannot require employees to use their existing sick leave accruals or other accruals (paid time off) for a COVID-19 quarantine order. Employers required to provide paid sick leave under the COVID-19 leave law must provide that leave separate from any other accruals.

Able to work from home but under a mandatory or precautionary quarantine

Employees who are not showing symptoms and are physically able to work through remote access or similar means are not eligible for quarantine leave.

Coordination with federal leave benefits

The leave provisions under the new state law are available only if they would provide greater leave benefits than provided by the federal Families First Coronavirus Response Act (FFCRA) that takes effect on April 1, 2020. (See our [March 26 FYI](#).) The FAQs clarify that the New York law is considered more generous than FFCRA when it applies to more employers and when it provides for more pay while on leave.

Covered employers. While the FFCRA paid sick time and paid family medical leave requirements do not apply to private employers with 500 or more employees, New York employers with at least 500 employees would be required to provide only the benefits set forth under the New York law. Employers with fewer than 500 employees are subject to both the FFCRA and New York law related to COVID-19 absences and will have to coordinate the benefits available under both laws.

Pay differentials. New York employers with more than 100 employees but fewer than 500 will be required to provide benefits under both the federal and state mandates. While the FFCRA caps its COVID-19 benefit payments, the New York law requires employees to be paid at their regular rate for the applicable leave period. Thus, New York employees would be entitled to any difference in pay between the benefit provided under the FFCRA and the benefit available under state law for that period.

In closing

The guidance released by New York on COVID-19 leave requirements provides some helpful clarifications for employers on a number of the new law's provisions.

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