

FYI[®]

For Your Information[®]

New York mandates paid sick leave for employees under quarantine or isolation orders due to COVID-19

On March 18, New York enacted legislation requiring employers to provide sick leave and job protection to employees subject to mandatory or precautionary quarantine or isolation orders by the state or other authorized governmental entity or health authority due to COVID-19. The law was effective immediately. New York employers should immediately evaluate how the new mandates interplay with existing sick leave policies and recently enacted federal requirements.

Background

On March 18, 2020, Governor Andrew M. Cuomo signed into law a bill ([S.8090](#)) requiring New York employers to provide sick leave and job protection to employees under quarantine or isolation orders as a result of COVID-19. The law took effect immediately.

Mandated sick leave

With limited exceptions, the new law requires employers to provide sick leave benefits to employees who are subject to mandatory or precautionary quarantine or isolation orders issued by New York state, or other authorized governmental entity, or health authority due to COVID-19. Unlike the recently enacted federal Families First Coronavirus Response Act of 2020 (FFCRA), the new New York law applies to all employers, not just those with under 500 employees.

The state's new sick leave law provides unpaid or paid sick leave for employees who are under mandatory or precautionary quarantine or isolation orders due to COVID-19. The amount of leave during any such order depends on the employer's size as of January 1, 2020, and net income as follows:

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Authors

Nancy Vary, JD
Richard Stover, FSA,
MAAA

- Employers with at least 100 employees — and all public employers — will be required to provide 14 days of paid sick leave during the quarantine or isolation period — four more days of leave than under the FFCRA.
- Employers with 11 to 99 employees must provide five days of paid sick leave and then unpaid sick leave for the remainder of the quarantine or isolation period. Employees will be eligible for New York Paid Family Leave (PFL) and short-term disability benefits upon exhaustion of paid sick leave.
- Employers with 10 or fewer employees and a net income of more than \$1 million in the previous tax year must provide five days of paid sick leave and then unpaid sick leave for the remainder of the quarantine or isolation period. Employees will be eligible for PFL and short-term disability benefits upon exhaustion of paid sick leave.
- Employers with 10 or fewer employees and a net income of \$1 million or less in the previous tax year would have to provide unpaid sick leave for the duration of the quarantine or isolation period. Employees will be eligible for PFL and short-term disability benefits during this period.

Buck comment. The state's new law does not indicate whether employer size is determined by counting the number of employees in New York or nationwide. Guidance is needed.

With certain limited exceptions, these mandated benefits are in addition to the employee's existing accrued sick leave. Employees who are quarantined or ordered to self-isolate as a result of COVID-19 are ineligible for the new paid benefits if they:

- Are asymptomatic or not yet diagnosed with a medical condition and are physically able to work remotely or through other similar means
- Recently travelled to countries with CDC Level 2 or 3 designations for nonbusiness reasons if the employee was provided notice of the CDC's travel warnings. However, employees who fall under this exception will be eligible to use accrued leave provided by the employer and/or unpaid sick leave for the duration of their quarantine or isolation order.

Interaction with federal law

Leave under the new New York law is not in addition to leave provided under the recently enacted FFCRA. However, the New York sick leave benefits are available to employees to the extent that they exceed similar federal protections and provisions in response to COVID-19. (For more information about FFCRA, see our [March 19, 2020 FYI](#).)

Job protections

Upon returning to work, employees must be restored to their same position with the same pay and other terms and conditions of employment that existed prior to their leave. Employers may not discharge, threaten, penalize or otherwise discriminate or retaliate against any employee for taking leave under the new law.

New York paid family leave and disability

The state's new sick leave law provides unpaid or paid sick leave for employees who are "subject to mandatory or precautionary orders of quarantine or isolation" due to COVID-19 and expands their eligibility for PFL or short-term disability benefits. Following the exhaustion of paid sick leave provided by their employer pursuant to this law, employees may use state PFL or disability benefits for the remainder of their quarantine or isolation. The benefits may be payable concurrently on the first full day of an unpaid mandatory or precautionary order of quarantine or isolation.

- **PFL** may be used for an employee's mandatory or precautionary quarantine or isolation due to COVID-19 or to provide care for the employee's minor dependent child who is subject to a quarantine or isolation order. PFL benefits are capped at \$840.70 per week.
- **NY disability benefits** are available if employees are unable to perform their regular job duties or other jobs offered by the employer due to a mandatory or precautionary order of quarantine or isolation due to COVID-19 and when the employee has exhausted all paid sick leave under the new state law. Disability benefits, which will be payable on the first day of disability, are capped at \$2,043.92 per week.

A general sick leave mandate to come

In addition to establishing the COVID-19 leave benefits described above, [S.8090](#) also amends the state labor law, effective September 14, 2020, to require private employers to provide job-protected sick leave. Beginning January 1, 2021, employers with four or fewer employees will generally have to provide five unpaid sick days per year. Employers with between five and 99 employees and smaller employers with a net income of \$1 million or more a year will have to provide up to 40 hours of paid sick leave per year. Larger employers will have to provide up to 56 hours of paid leave per year. Employers that have sick leave or PTO policies that provide employees an amount of leave that meets or exceeds these requirements and satisfies specified accrual, carryover and use requirements will not be required to provide additional sick leave.

In closing

New York employers should immediately evaluate how the new COVID-19 related mandates interplay with existing sick leave policies and federal requirements and prepare to respond to employee inquiries while awaiting guidance from the New York Labor Commissioner.

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