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New York releases new COVID-19 sick leave guidance

Last March, New York enacted legislation authorizing sick leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. On January 20, 2021, the New York State Department of Labor issued new guidance on benefits available to employees under the state's so-called quarantine law.

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Background

On March 18, 2020, New York enacted legislation ([S.8090](#)) requiring employers to provide up to 14 days of job-protected sick leave to eligible employees who are subject to government-issued quarantine or isolation orders as a result of COVID-19. The state's so-called "quarantine law" provides paid and unpaid sick leave (depending on the employer's size and net income) with access to expanded paid family leave (PFL) and temporary disability benefits where applicable. After exhausting the paid sick leave benefit provided under this law, employees may use state PFL or disability benefits for the remainder of their quarantine or isolation. (See our [March 24, 2020 FYI](#) for further details.)

New NYSDOL guidance

On January 20, 2021, the New York State Department of Labor (NYSDOL) issued [guidance](#) that seeks to clarify COVID sick leave benefits available to employees (other than those in the healthcare industry) under the state's quarantine law. Separate but similar [guidance](#) for healthcare employers was issued in June 2020.

The latest guidance addresses two key issues employers face:

- Whether employees who receive multiple positive COVID-19 test results are entitled to multiple periods of COVID sick leave

- Whether employers must pay employees who are not subject to a government-issued quarantine or isolation order if they require the employees to remain out of the workplace due to exposure or possible exposure to the virus

Multiple periods of COVID sick leave

Under the quarantine law, employees are entitled to paid leave only if they are subject to a mandatory or precautionary order of quarantine or isolation. The guidance clarifies that, with the exception of nursing home staff, employees need not be tested before returning to work from a period of mandatory quarantine or isolation. However, an employee who does test positive after the end of a mandated quarantine or isolation period must not report to work and will automatically be deemed to be subject to another mandatory order of isolation from the Department of Health.

Under the new guidance, an employee who has already received leave for a period of quarantine or isolation will be entitled to an additional period(s) of COVID sick leave if they either (1) return to work after quarantine or isolation and subsequently receive a positive COVID-19 test result, or (2) continue to test positive for COVID-19 after the end of their initial quarantine or isolation period. To qualify for those benefits during subsequent quarantine or isolation orders, the employee must submit documentation of a positive test from a licensed medical provider or testing facility — unless the test was given by the employer. Notably, the guidance limits employee eligibility for COVID sick leave benefits to three quarantine periods if based on positive tests for the virus, but it does not specify whether the limitation applies on an annual or some other basis.

Exclusion from workplace

The guidance appears to impose a new pay obligation on employers that require employees who are not otherwise subject to a government-issued quarantine or isolation order to remain out of work due to their exposure or potential exposure to COVID-19. Regardless of whether the exposure or potential exposure was in the workplace, employees will be entitled to be paid at their regular rate of pay until the employer either permits them to return to work or they become subject to a government-issued order of quarantine or isolation. If subject to such an order, they will receive COVID sick leave as required by the quarantine law.

In closing

The latest guidance from the NYSDOL appears to extend the availability of COVID-related leave under the quarantine law and to create a new employer paid leave obligation for certain employees who are not subject to a quarantine or isolation order. Employers should review and update their leave policies and procedures in light of this guidance.

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