

FYI[®]

For Your Information[®]

New York releases guidance on COVID-19 vaccine leave law

On March 12, New York state enacted a law requiring employers to provide paid leave for COVID-19 vaccinations effective immediately. It provides up to four hours of leave per injection that cannot be charged against other leave accruals. Recent FAQs issued by the state Department of Labor clarify certain rights and paid leave obligations for New York employers under the new law.

Background

On March 12, the New York state legislature passed — and Governor Cuomo signed — legislation ([S2588A](#)), amending the New York Labor Law to provide both public and private sector employees paid leave for COVID-19 vaccinations. The law took effect upon signing.

The vaccine leave law generally requires employers to provide employees with “a sufficient period of time, not to exceed four hours per vaccine injection,” to be vaccinated for COVID-19. Vaccine leave is paid at the employee’s regular rate of pay and is in addition to any other leave to which the employee is entitled. Employers are prohibited from discriminating or retaliating against employees who request or take vaccine leave or who otherwise exercise their rights under the new law.

Employees may be entitled to more time off to receive the vaccine pursuant to a collective bargaining agreement or other employer policy. However, provisions of the new law may only be waived if the bargaining agreement explicitly references them. The law sunsets on December 31, 2022.

Volume 44

Issue 12

April 6, 2021

Authors

Nancy Vary, JD
Abe Dubin, JD

American Rescue Plan Act two-part webinar series

Replays of both of our recent ARPA webinars are available. In the first, our team of experts explored the [impact of the Act on pension plan funding](#) and in the second, we addressed [the Act’s compliance implications on employment, health, and welfare benefits](#).

New guidance

The New York State Department of Labor (NYSDOL) has released [FAQs](#) that address and clarify certain employer obligations under the new leave law. Key takeaways are highlighted below.

Amount of leave

Except as indicated above, the amount of leave to which an employee is entitled depends on the number of required COVID-19 vaccine injections and cannot be charged against any other paid leave benefit, such as paid sick time under New York state or New York City laws. If a vaccine requires two injections (currently, the Pfizer and Moderna vaccines), the employee would be eligible for two periods of paid leave of up to four hours each (eight hours in total). Employees who receive a vaccine that requires a single injection (currently, the Johnson & Johnson vaccine) could take paid leave only once for a period of up to four hours. Leave is paid at the employee's regular rate of pay.

Leave use

Paid leave is available only for the employee to be vaccinated. The new law does not provide leave to assist a relative or other individual to receive the vaccine.

Applicability

Only employees vaccinated on or after the law's effective date of March 12, 2021 are eligible for paid vaccine leave. While the law does not provide any retroactive benefit rights, it also does not prevent employers from voluntarily providing them for covered absences before March 12.

Notice

The FAQs confirm that employers may require notice before an employee takes paid time off for COVID-19 vaccination. However, they do not address how much notice may be required or timing of the notice.

Proof of vaccination

Importantly, the law does not prevent employers from requiring proof of vaccination from employees who claim paid vaccine leave. But the NYSDOL cautions employers to "consider any confidentiality requirements applicable to such records prior to requesting proof of vaccination."

Unionized employers

Paid leave rights provided to employees under the new law may be waived by a collective bargaining agreement, provided that the agreement explicitly references section 196-c of the New York Labor Law. In some circumstances, companies may still have an obligation to negotiate issues related to administering the new leave requirement.

In closing

While the FAQs help clarify employer obligations under the vaccine leave law, additional clarification is needed. Even as we await further guidance, New York employers should review and update their paid leave policies and payroll practices, particularly as they relate to COVID-19.

Produced by the Compliance Consulting Practice

The Compliance Consulting Practice is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.