

COVID-19: NEW YORK CORONAVIRUS PAID LEAVE UPDATE

On Wednesday, March 18, 2020, the state Senate of New York greenlighted a bill that would provide paid sick leave to New York workers who are isolated or under quarantine due to the coronavirus. The bill is set to go into effect immediately upon Governor Cuomo's signing.

Leave for Individuals Quarantined or Isolated Due to COVID-19

Intended to address the immediate need of employees affected by COVID-19 who are subject to mandatory or precautionary orders of quarantine or isolation, the new legislation will provide the following:

- **Employers with 10 or fewer employees** and a net income less than \$1 million will provide job protection for the duration of the quarantine order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.
- **Employers with 11-99 employees, and employers with 10 or fewer employees and a net income greater than \$1 million**, will provide at least 5 days of paid sick leave, job protection for the duration of the quarantine order, and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.
- **Employers with 100 or more employees, as well as all public employers** (regardless of number of employees), will provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.

Out-of-state employers are expected to be subject to this bill if they employ the requisite number of employees *within* the State of New York.

The bill is clear that this mandated leave is in addition to any sick leave that an employee has already accrued, and that employers cannot force employees to first

use their accrued leave to first offset the additional mandated leave ("Such leave shall be provided without loss of an officer or employee's accrued sick leave."). The bill also reinforces that employers may not retaliate against employees by virtue of this leave.

The provisions of the quarantine legislation are set to take effect immediately upon Governor Cuomo's signing, ensuring that New York workers will be able to take advantage of these benefits.

The legislation also separately includes the comprehensive paid sick leave proposal that was advanced by the Governor as part of his State of the State and FY 2021 Executive Budget, which is proposed to be effective 180 days after enactment. New York City has had five days of mandated paid sick leave since 2014.

Expansion of PFL and Disability Benefits

The legislation also expands the definition of "disability" under the Disability Benefits Law to include COVID-19-related uses. The definition of "disability" now includes the inability of an employee to perform the regular duties of their employment or duties offered by an employer as a result of a quarantine or isolation period, upon exhausting sick leave. Additionally, the disability waiting period will be waived for these purposes.

Under the legislation, disability and PFL benefits may be payable concurrently to eligible employees upon the first full day of the unpaid period of a quarantine or isolation order, up to a maximum of \$840.70 in PFL and \$2,043.92 in disability benefits per week. The maximum weekly benefit for disability is the difference between the maximum weekly family leave benefit and the employee's total average weekly wage from each covered employer, up to the maximum of \$2,043.92.

Unemployment Insurance

The bill waives the waiting period for unemployment benefits due to a business closure for reasons related to COVID-19 or a mandatory order to close the employer.

Job Protection

The bill also provides protections for employees returning to work following COVID-19-related leave. An employee must be restored to the position held prior to any leave, with the same pay and other terms and conditions of employment. It also prohibits discrimination or retaliation against employees who have taken leave.

Overall, further guidance by the New York Department of Labor and Workers' Compensation Board is expected.

This situation is rapidly evolving, and, as with any new piece of legislation, there are expected to be grey areas and nuance. As an example, there are already conflicting analyses published regarding whether the significant disability (DBL) and PFL changes do or do not apply to an employer with more than 100 employees. These employers are still required to provide the 14 days of job-protected paid sick leave, but there may be no changes to them/their employees for DBL and PFL.

While this situation is evolving, we strongly urge customers and others to speak with their legal counsel if they need specific advice as concerns the impact of this new legislation on their businesses.

As always, we will continue to monitor the situation and provide additional guidance as it becomes available.

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