

Effective Immediately New York Requires Sick Leave and Other Protections for Employees Affected by COVID-19

by Laura M. Lestrade

New York has enacted legislation effective immediately that requires employers to provide sick leave and job protection to certain employees affected by the COVID-19 Pandemic and expands disability and paid family leave benefits available to such employees.

Who is Covered

The only employees eligible for the protections of this law ("Eligible Employees") are those subject to quarantine or isolation orders issued by the State of New York, the department of health, local board of health or any government entity authorized to issue orders due to COVID-19.

Who is Not Covered

This law has limited application, at least at the present, because it does not apply to employees who are not subject to quarantine orders, thereby excluding those who have self-quarantined for precautionary reasons or in response to recommendations by Federal, State or local authorities. It also does not apply to quarantined employees who are able to work remotely.

What Benefits are Provided

In addition to leave benefits that an employer may already provide:

- Employers with 10 or fewer employees as of January 1, 2020 and a net income less than \$1 million in the prior tax year shall provide Eligible Employees with unpaid sick leave for the duration of the quarantine order. These Eligible Employees shall be eligible for 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 of greater than \$1 million shall provide Eligible Employees with at least five days of paid sick leave and unpaid leave for the duration of the quarantine order.

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After five days of paid sick leave, these Eligible Employees shall be eligible for 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), shall provide Eligible Employees with at least 14 days of paid sick leave.
- When Eligible Employees return to work following leave taken under this law, employers must restore them to the positions they held prior to the leave with the same pay and other terms and conditions of employment.
- Employers are prohibited from discharging, retaliating against or otherwise taking adverse actions against Eligible Employees for taking leave under this law.

Partial Exclusion for Quarantine Resulting From Certain Non-Work Travel

The law does not mandate additional paid sick leave for any employee who is subject to an order of quarantine upon returning to the United States after non-business travel to a country subject to a CDC travel notice, where the employee was aware of the travel notice prior to travel. Employees in this category must be allowed to use available accrued leave, to the extent it is available, and unpaid sick leave for the duration of the quarantine order.

Exceptions for Asymptomatic Employees Who Can Work Remotely

The provisions of this law do not apply “where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means.” This provision appears to further limit the benefits of this law to employees who are subject to a quarantine order and cannot perform their job functions remotely. How this will be assessed remains to be seen.

The Expansion of Short-Term Disability and Paid Family Leave Benefits

The law expands eligibility under New York’s short term disability and paid family leave statutes to cover Eligible Employees; allows that disability and paid family leave benefits may be paid concurrently to an Eligible Employee; eliminates any waiting period before an Eligible Employee may begin collecting such benefits; and increases the benefit ceilings under those statutes to equal, in certain circumstances, an Eligible Employee’s full salary, up to a maximum of \$2884.62 per week, or \$150,000 per year.

Unemployment Waiting Period Waived

The law also eliminates the waiting period for unemployment benefits where an employer is ordered closed by government order.

Employers Can Still Take Personnel Actions They Would Have Otherwise Taken

The law provides that it does not prohibit employers from taking personnel actions that otherwise would have been taken regardless of any request to use, or utilization of, any leave provided by this law.

Public Employee Contracts Not Affected

The law does not impact the rights and obligations of public employees and employers under any collectively negotiated agreement.

Interaction With Federally Mandated Benefits

Anticipating that the federal government may pass legislation that provides sick leave and/or employee benefits to aid employees affected by COVID-19 [See "[What Employers need to know now that the President has signed the Family Relief Act](#)"], the law provides that if such legislation is passed, the benefits provided under this law shall not be available to otherwise Eligible Employee unless the benefits would be greater than the benefits under federal law. In that case, the Eligible Employee is entitled to claim, under this law, the difference between the benefits provided under this law and the benefits available under federal law.