

RECENT COVID-19 LAWS: WHAT EMPLOYERS NEED TO KNOW

Last week, both New York State and the Federal government passed emergency laws that provide paid leave to certain employees who may be quarantined or otherwise unable to work due to COVID-19. Here is what NY employers need to know.

NY State Paid Sick Leave Law

On March 18, 2020, the New York State Paid Sick Leave Law ("NYSPSLL") was enacted to provide leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation and are not able to work remotely. It requires employers to provide these employees with leave, which can be paid or unpaid, depending on the size of the employer, during that quarantine/isolation period. In sum, larger employers must provide more paid leave.

The law was originally intended to provide paid sick leave for all types of illnesses, but a trimmed-down version, aimed only at COVID-19, was hurriedly pushed through. These COVID-19-specific provisions went into effect immediately.

What Does Quarantine Mean?

The NYSPSLL defines a quarantine or isolation order as a "mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any government entity duly authorized to issue such order due to COVID-19." It appears that the paid leave is not applicable to a New York State or City "shelter in place" order or the current NY statewide mandate that non-essential businesses send 100 percent of their workforces home. However, the NYSPSLL contains a separate section that provides employees may begin collecting unemployment benefits right away if their employer's business is closed due to a mandatory order of a government entity related to COVID-19. As forthcoming guidance is issued from the

State, we will follow up if the State opines that such orders are covered by this law.

The Monetary Benefits for Quarantined Employees

The amount and type of leave an employee can receive depends on the size of the employer:

- 1) Employees of businesses with 10 or fewer employees and that had a net income of *less* than \$1 million last year are entitled to:
 - Guaranteed job protection – *but not paid sick leave from their employer* – for the duration of the quarantine order; and
 - PFL and DBL benefits through their employer's existing policy, up to a maximum of \$2,884.62 per week, for the duration of the quarantine.
- 2) Employees of *either* a) businesses with 10 or fewer employees and that had a net income *greater* than \$1 million last year, *or* b) businesses with 11-99 employees, are entitled to:
 - At least five days of paid sick leave from their employer and guaranteed job protection for the duration of the quarantine order; and
 - After these *paid* sick days, PFL and DBL benefits through their employer's existing policy, up to a maximum of \$2,884.62 per week for the duration of the quarantine.
- 3) Employees of businesses with 100 or more employees are entitled to:
 - Guaranteed job protection for the duration of the quarantine order; and

- At least 14 days of *paid* sick leave from their employer.
- 4) Employees of public employers of any size are entitled to:
- Guaranteed job protection for the duration of the quarantine order; and
 - At least 14 days of *paid* sick leave from their employer.

Family Leave and Disability Benefits

The NYSPSLL also expands the definition of "family leave" under the New York Paid Family Leave Law ("PFL") and the definition of "disability" under the New York State Disability Benefits Law ("DBL") to include an employee's quarantine or an employee's minor dependent's quarantine. These definitions enable quarantined employees who are entitled to only *unpaid* sick leave to begin collecting benefits under *both* the PFL and the DBL as soon as their quarantine begins. They also allow eligible employees who are entitled to only five days of paid sick leave to begin collecting PFL and DBL benefits when the paid leave is used up. Employees of large employers entitled to up to 14 days of paid leave, under certain qualifying circumstances, may be able to receive benefits under PFL and DBL after the expiration of the 14 days.

Finally, there is a provision in the law for collecting both disability benefits and paid family leave benefits concurrently. Thus, employees may be eligible to receive their weekly wages through a combination of PFL and disability benefits up to a maximum of \$2,884.62 per week.

Employees Whose Children Are Quarantined

Employees who have a minor dependent child under an order of mandatory or precautionary quarantine or isolation are not entitled to *sick leave*, but may be eligible to take PFL to care for them. As with paid sick leave, this benefit is not available to employees who are able to work through remote access or other means.

Exemptions and Caveats

The NYSPSLL contains an important exemption and a few caveats:

- Employers do not have to provide leave if the employee is deemed asymptomatic and is able to work remotely.

- Employers who already provide their employees with paid sick leave should note that the paid sick leave under this law is *in addition to* the employee's accrued sick leave. In other words, those employers cannot require or permit the employee's accrued sick leave or other accrued leave to run concurrently with paid sick leave under this law.
- Employees are not entitled to benefits if they are subject to a quarantine order because they traveled to a country designated a Level 2 or 3 risk by the CDC and that travel was not at the direction of their employer or part of their employment. These employees can use their accrued sick leave or, if they have no accrued sick leave, they can take unpaid sick leave with job protection.
- An employee entitled to receive benefits under federal law will also be eligible to receive the NYS benefits to the extent that they are in excess of what's provided by the federal law.

No Retaliation; Restoration and Posting

The law prohibits an employer from retaliating against employees for availing themselves of the protections under this law. Employees must be restored to their original positions following leave.

Employers have to provide employees with notice of their rights under this law. A notice form prepared by the New York State Department of Labor can be found [here](#).

Federal "Families First Coronavirus Response Act"

The federal Families First Coronavirus Response Act ("FFCRA") was enacted on March 17, 2020. It takes effect on April 2, 2020 and will be in effect until December 31, 2020. It provides paid leave to employees who are unable to work due to COVID-19 – not just those who are quarantined. The FFCRA applies to *all* employers with *fewer than 500* employees, except health care providers or emergency responders. If the employees are able to work remotely, they just continue to be paid for their work as usual.

FFCRA Requires Paid Leave

There has never been a federal law that requires paid sick time or leave, although some states and cities have laws that require it, and many employers provide it

voluntarily. The FFCRA now requires *employers to pay* employees who take certain types of leave due to COVID-19. Specifically, under this law, employers must provide *paid* sick time to employees who are unable to work (or telework) because:

- 1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19¹;
- 2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 4) The employee is caring for an individual who:
 - Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; or
 - Who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 5) The employee is caring for a child whose school has been closed or whose child care provider is unavailable due to COVID-19 precautions; or
- 6) The employee is experiencing "any other substantially similar condition specified by the Secretary of Health and Human Services."

Employers Must Provide At Least Two Weeks of Leave

Employees are entitled to two weeks of paid leave if they fall into one of the six categories set forth in FFCRA. Full-time employees are entitled to 80 hours of paid sick time, while part-time employees are entitled to be paid for the number of hours they normally work in a two-week period. The requirement for two weeks of paid leave applies to all employees, no matter how long they have been employed. Employers may not require

employees to use other paid leave before using the paid sick time provided by this section. Please note that some eligible employees in NY may be entitled to receive additional days of paid leave from their employer and/or insurance carriers.

Calculating the Amount of Sick Pay

The amount of sick pay an employee is entitled to depends on the reason the time off is needed. If the time is needed for the employee's own condition (reasons 1-3 above), the pay is calculated at the employee's regular rate, up to a maximum of \$511 per day and a total of \$5,110 for the 80-hour period. If the time is needed for another person's condition or a "similar condition" (reasons 4-6 above), the pay is calculated at 2/3 of the employee's regular rate up to a maximum of \$200 per day and a total of \$2,000 for the 80-hour period. Please note that some eligible employees in NY may be entitled to full pay under New York State law.

Additional Leave for Employees Caring for Dependent Children

Employees who are unable to work because they are caring for a minor, dependent child whose school has been closed or whose child care provider is unavailable due to COVID-19 precautions – that is, reason (5) above – are entitled to additional leave. After the first two weeks of leave described above, employees who have been employed for at least 30 calendar days are entitled to 10 more weeks of paid leave to care for a child whose school has been closed or whose child care provider is unavailable. For this 10-week period, employees are entitled to 2/3 of their regular rate, times the number of hours they are normally scheduled to work, up to a maximum of \$200 per day, and a maximum of \$10,000 for the 10 weeks.

No Retaliation; Restoration and Posting

The FFCRA, like the Family and Medical Leave Act, provides job protection. Employers are generally required to restore employees to the positions they held by when the leave started, or to positions with

¹ The FFCRA does not explain what it means to be subject to a quarantine or isolation order. The likely meaning of this term is that the individual employee has been specifically ordered to quarantine due to symptoms of or exposure to COVID-19. In other words, it is unlikely that a blanket proclamation from a government entity that all citizens should not go to work, or should shelter in place, means that an employee is entitled to Emergency Paid Sick Leave. However, forthcoming guidance from the state may take a different view.

equivalent benefits and pay. Employers may not terminate or otherwise discriminate against employees who take leave or file a complaint under the FFCRA. Employers must post a notice—to be created by the Labor Department—setting forth the requirements of the FFCRA.

Exemption for Small Businesses

The FFCRA leaves open the possibility that businesses with fewer than 50 employees may be exempt from providing paid sick leave when the employee's child's school is closed or caregiver is unavailable (reason 5), if providing paid leave would "jeopardize the viability of the business as a going concern." The FFCRA enables the US Department of Labor to enact regulations establishing such an exemption.

Employers of fewer than 25 employees are exempt from restoring employees who took childcare leave to their positions if the positions no longer exist due to economic conditions or other changes caused by COVID-19.

However, there does not seem to be an exemption from the FFCRA for small employers with respect to paid sick leave for reasons 1-4 and 6 above.

Tax Credits and Unemployment

The FFCRA provides tax credits to employers as a way to fund the leaves discussed in this Client Alert. These provisions are beyond the scope of this summary. Employers should discuss the tax credit provisions with their accountants and tax counsel.

The FFCRA also provides certain benefits to states that provide immediate unemployment insurance benefits to employees who lose their jobs due the COVID-19 pandemic.

Federal and State Warn Acts

Employers should not forget about the federal and state WARN Acts, which require advance notice of plant-closings and mass layoffs. For example, the federal WARN Act applies to employers with 100 or more full-time employees and requires 60 days' notice. The New York State WARN Act applies to employers with 50 or more full-time employees and requires 90 days' notice. Both statutes contain exceptions for unforeseeable business circumstances and natural disasters. At present, it is too soon to tell whether COVID-19 will be considered to fall within these exceptions.

For Questions Relating to This Client Alert, Please Contact:



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On behalf of employers, Ms. May's counseling experience includes advising a broad range of clients concerning all aspects of the employment relationship to avoid litigation. She advises employers about hiring and termination of employment, policies and practices, employee misconduct, restrictive covenants, leaves of absence and compliance with federal, New York state and New York City laws governing employment. Ms. May also regularly drafts, reviews and negotiates employment and executive compensation agreements, restrictive covenants and separation agreements.