

New York State COVID-19 Paid Sick Leave Legislation

The New York legislation, which took effect immediately upon Governor Cuomo's signature on March 18, 2020, as Chapter 25 of the Laws of 2020, guarantees leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, the New York State Department of Health, a local board of health, or any other authorized governmental entity due to COVID-19.

Specifically, the law requires:

- Private employers with 10 or fewer employees and net income of one million dollars or less in the previous tax year to provide **unpaid** sick leave until the termination of the quarantine/isolation order.
- Private employers with 10 or fewer employees and net income over one million dollars in the previous tax year and private employers with between 11 and 99 employees, regardless of income, to provide at least **five (5) days of paid sick leave**, followed by unpaid sick leave until the termination of the quarantine/isolation order.
- Private employers with 100 or more employees to provide at least **14 days of paid sick leave**, followed by unpaid sick leave until the termination of the quarantine/isolation order.
- Public employers, regardless of size, to provide at least at least **14 days of paid sick leave** during the quarantine/isolation order, paid at the employee/officer's "regular rate of pay for those regular hours during which [he or she] is absent from work" due to the order. For purposes of this provision, the term "public employer" includes, but is not limited to, the state, counties, cities, towns, villages, school districts and BOCES, government entities operating colleges or universities, public improvement or special districts, and public authorities, commissions, and benefit corporations.

The law states that the above leave must "be provided without loss of the officer or employee's accrued sick leave." It is unclear whether employers can rely on existing vacation, PTO, and other time off banks not designated as "sick leave" to satisfy their obligations under the new law. The New York State Department of Labor is authorized to issue regulations to implement the new law, and such regulations may provide clarity on this issue.

During the unpaid portions of these leaves, employees of private employers can apply for Disability Benefits (“DB”) and Paid Family Leave Benefits (“PFL”) from the employer’s DB/PFL insurance carrier. Notably, PFL and DB are available **concurrently** and without any waiting period. This is a departure from the usual PFL and DB scheme, which does not allow both benefits to be collected at the same time. With respect to DB, the law increases the maximum benefits to the difference between the maximum PFL benefit and the employee’s total weekly wage, up to a maximum DB benefit of \$2,043.92. This rich benefit is available only for COVID-19 quarantine/isolation orders; the regular maximum DB of \$170.00 per week, as well as the normal one-week waiting period for DB, continues to apply to all other qualifying DB circumstances. Taken together with PFL, which is currently subject to an \$840.70 weekly maximum, the new law provides for a maximum weekly benefit of **\$2,883.92**.

The law also expands the qualifying circumstances for PFL to include leave taken to “care for a minor or dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by New York State, the Department of Health, the local board of health, or any other authorized governmental entity due to COVID-19.” Employers are not required to provide any paid leave for this qualifying circumstance, and the normal maximum PFL benefit of \$840.70 per week applies.

The law contains three important exceptions and limitations:

- First, the law does not apply where the employee is deemed asymptomatic or has not yet been diagnosed with any other medical condition and is physically able to work while under the quarantine/isolation order through remote access or other similar means.
- Second, an employee is not eligible for paid benefits under the law (including paid sick leave, PFL, or DB) if the employee is subject to a quarantine/isolation order after returning to the United States from travel to a country for which the Centers for Disease Control and Prevention (“CDC”) had issued a Level 2 or Level 3 travel notice, provided that: 1) the travel was not taken as part of the employee’s employment or at the direction of the employer; and 2) the employee was provided notice of the CDC’s travel notice and the unavailability of paid benefits following such travel prior to the travel. However, even under these circumstances, the employee must be permitted to use any accrued leave, followed by unpaid leave, for the absence.

- Finally, the law provides that if the federal government adopts law or regulation that provides sick leave and/or employee benefits for employees related to COVID-19, the employee's maximum benefits under the law are equal to the difference between such federal benefits and the benefits that would otherwise be available under the state law. **This means that New York employers will not be able to take advantage of the caps set forth in the federal legislation for employees who are subject to a quarantine/isolation order, and will have to provide such employees with paid sick leave at the level set forth in the state law.**

Leave under the state law, whether paid or unpaid, is job-protected, meaning the employee must be restored to his or her position at the same rate of pay and other terms and conditions of employment at the conclusion of the leave. The law also contains a prohibition on discrimination or retaliation against an employee for taking such leave.