

Memorandum

UPDATE: New York State Responds to Coronavirus Crisis With Paid Sick Leave Law

April 8, 2020

On Wednesday, March 18, 2020, New York Governor Andrew Cuomo signed into law employee-protective measures to address the current coronavirus disease 2019 (“COVID-19”) crisis. The law went into effect immediately (unlike the federal law on sick leave, which the U.S. Department of Labor has said will become effective April 1, 2020).¹

Under this law, and depending on the size and net income of their employer (measured as of January 1, 2020), employees who are subject to either mandatory or precautionary orders of COVID-19 quarantine or isolation issued by New York state, a state or local department of health or any other duly authorized government authority are entitled to sick leave as follows:

- All private employers with 100 or more employees must provide at least 14 days of paid sick leave;
- All private employers with between 11-99 employees must provide at least 5 days of paid sick leave followed by unpaid sick leave until the termination of any quarantine or isolation. After five days of paid sick leave, the employer must provide employees access to New York State’s Paid Family Leave and Benefits Law (“PFLBL”) and disability benefits including wage replacement for their salaries up to \$150,000;
- Private employers with 10 employees or fewer and a net income of greater than \$1 million in the previous tax year must provide at least five days of paid sick leave followed by unpaid sick leave until the termination of any quarantine or isolation. After five days of paid sick leave, the employer must provide employees access to PFLBL and disability benefits including wage replacement for their salaries up to \$150,000;
- Private employers with 10 employees or fewer and a net income of \$1 million or less in the previous tax year must provide unpaid sick leave until the termination of any quarantine or isolation. In addition, the employer must provide employees access to PFLBL and disability benefits for the period of quarantine including wage replacement for their salaries up to \$150,000; and
- All public employers must provide at least 14 days of paid sick leave.

¹ On April 3, 2020, as part of a comprehensive budget bill (S. 7506-B; A. 9506-B), New York enacted statewide mandatory sick leave to commence January 1, 2021, which requires up to 56 hours of paid leave depending on the size of the employer. This new law will be codified at section 196-b of the New York Labor Law.

Employees who are physically able to work remotely or through other means while under a mandatory quarantine or isolation are not eligible to take COVID-19-related sick leave under this law if they are deemed asymptomatic or have not yet been diagnosed with a medical condition.

If the federal government provides employees with sick leave or any other benefits to employees in response to COVID-19, employees are not entitled to have these leaves run consecutively. For example, on March 18, 2020, the federal government enacted the Families First Coronavirus Response Act (“FFCRA”), which beginning April 1, 2020 will provide employees with paid emergency leave and certain eligible employees paid leave under the Family and Medical Leave Act. Leave under the New York law will run concurrently with leave under the FFCRA and any other new federal laws that follow, but to the extent that New York law provides greater benefits, employees will be entitled to these greater benefits.

Finally, COVID-19-related sick leave under the law is in addition to an employee’s accrued sick leave provided by the employer’s policy, unless the employee is subject to quarantine or isolation as a result of non-business travel to a country identified as level 2 or 3 risk by the Centers for Disease Control and Prevention (“CDC”) (*e.g.*, most European countries, Iran and China). Such employees are not entitled to paid sick leave or other paid benefits under the law at all; only unpaid leave for the duration of the quarantine or isolation order.

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