

DETERMINING COVID-19 LEAVES OF ABSENCE THROUGH DECEMBER 31, 2020

FOR NEW YORK CITY EMPLOYERS WITH FEWER THAN 500 EMPLOYEES

Presented by



NYC HOSPITALITY ALLIANCE

WHAT IS THE REASON FOR THE COVID-19-RELATED LEAVE REQUEST?

Employee subject to government quarantine order (includes shelter-in-place and stay-at-home orders applicable to general public)

2 weeks of FFCRA emergency paid sick leave at regular rate (or minimum wage, if higher) up to a maximum of \$511 per day (\$5,110 in total) if employer has work and employee is unable to work or telework

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Any greater benefits provided by NYS COVID Leave (e.g., 5 or 14 days of paid sick leave with no cap) if employee also is symptomatic and quarantine order is specific to employee (e.g., not the general public)

FFCRA emergency paid sick leave and NYS COVID Leave run concurrently unless employee initially takes leave of absence under FFCRA for a reason other than a government quarantine order, in which case employee may be eligible for FFCRA emergency paid sick leave followed by NYS COVID Leave

In addition, if eligible for NYS COVID Leave and employer has fewer than 100 employees as of 1/1/20, NYS PFL (up to 60% of average weekly wage with cap of \$2,884.62 per week) and short-term disability benefits (up to \$2,043.92 per week) available through termination of quarantine or isolation order

In addition, employee may elect to use accrued NYC ESSTA leave after FFCRA and/or NYS COVID Leave/NYS PFL if employee is ill

In addition, if employer has 50 or more employees and employee worked 1,250+ hours over past 12 months, traditional unpaid FMLA leave may be available

After exhausting all leaves above, consider unpaid leave of absence as a reasonable accommodation if employee still unable to return to work

Employer's business closed due to public health emergency

Employee may elect to use accrued NYC ESSTA leave

Employee experiencing symptoms and seeking medical diagnosis or advised by health care provider to self-quarantine

2 weeks of FFCRA emergency paid sick leave at regular rate (or minimum wage, if higher) up to a maximum of \$511 per day (\$5,110 in total) if unable to work or telework

In addition, employee may elect to use accrued NYC ESSTA leave after FFCRA emergency paid sick leave or if ineligible for FFCRA emergency paid sick leave

In addition, if employer has 50 or more employees and employee worked 1,250+ hours over past 12 months, traditional unpaid FMLA leave may be available

After exhausting all leaves above, consider unpaid leave of absence as a reasonable accommodation if employee still unable to return to work

Employee caring for child whose school or child care provider is closed or unavailable

2 weeks of FFCRA emergency paid sick leave at 2/3 regular rate (or minimum wage, if higher) up to a maximum of \$200 per day (\$2,000 in total)
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10 weeks of FFCRA emergency paid FMLA leave up to a maximum of \$200 per day (\$10,000 in total)

In addition, employee may elect to use accrued NYC ESSTA leave after FFCRA emergency paid sick leave and emergency paid FMLA leave or if ineligible for FFCRA emergency paid sick leave or emergency paid FMLA leave

Employee caring for individual subject to government quarantine order or advised by health care provider to self-quarantine

2 weeks of FFCRA emergency paid sick leave at 2/3 regular rate (or minimum wage, if higher) up to a maximum of \$200 per day (\$2,000 in total) if unable to work or telework

In addition, if caring for dependent minor child, NYS PFL available during quarantine (up to 60% of average weekly wage with cap of \$840.70 per week)

In addition, if caring for a family member with a "serious health condition," up to 10 weeks of NYS PFL may be available

In addition, if individual is family member, employee may elect to use accrued NYC ESSTA leave after FFCRA emergency paid sick leave and NYS PFL or if ineligible for FFCRA emergency paid sick leave or NYS PFL

In addition, if employer has 50 or more employees and employee worked 1,250+ hours over past 12 months, traditional unpaid FMLA leave may be available

Employee generally uncomfortable about returning to work

Engage in cooperative dialogue with employee, determine whether concerns are the result of a protected disability, and consider if unpaid leave of absence or another accommodation may be required

If unpaid leave of absence or another accommodation (such as working from home) is not required or reasonable under applicable laws or employer policies, consider terminating employee's employment in consultation with counsel

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DEFINED TERMS

FFCRA = Families First Coronavirus Response Act

NYS COVID Leave = New York State COVID-19 Quarantine Leave

NYS PFL = New York State Paid Family Leave

NYC ESSTA = New York City Earned Safe and Sick Time Act

FMLA = Family and Medical Leave Act

This document is intended for general information purposes only and does not address all contingencies, including employer policies that may provide for more generous benefits. It does not constitute legal advice or create an attorney-client relationship. Employers should consult with counsel when considering any COVID-19 related leave request. This document is based on information at the time it was prepared and is subject to change without notice. Laws and/or other circumstances may have changed since the publication.