

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

March 27, 2020

Dear Governor Cuomo:

We write to thank you for all you are doing to keep New Yorkers safe and for your incredible work to insure that all New Yorkers have access to paid sick time both now during this unprecedented crisis, and in the future. We remain concerned, however, that in order to achieve the goals of 1) encouraging full compliance with all government directives for mandatory and precautionary quarantine; and 2) ensuring maximum access to job protection and wage replacement for all those forced out of work by such directives; further clarity and an easier more streamlined process for applications are necessary.

Because the virus is spreading rapidly and, therefore, time is of the essence, it is important that we immediately address the confusion surrounding the state's emergency paid sick days policy. In particular, we need to reach people with a simple explanation of what is 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 governmental entity authorized to issue such order due to COVID-19" and how to obtain this order. The Governor's PAUSE order, which went into effect Sunday March 22, has added urgency to the need for more specific definitions and instructions.

In addition, we continue to believe that the legislation is being interpreted too narrowly, and that interpretation is creating unnecessary roadblocks for those who need to access benefits. We recommend that formal, individualized documentation from a board of health or other authority should NOT be required in order to access benefits under the law. Such a requirement unduly burdens both those who require the documentation and our health departments that already have so much to do in fighting the pandemic.

Specifically, we urge you the Governor's Office or the NYS Department of Health to issue the following clarifications of this legislation:

1. Compliance with any general order issued by a public health agency or authorized government official requiring isolation or quarantine will be considered an order of isolation or quarantine under the law;
2. A doctor's order requiring mandatory or precautionary isolation or quarantine will be considered an order of isolation or quarantine under the law;
3. Misclassified workers—including housekeepers, home care workers, janitors, massage therapists, exotic dancers, Uber and Lyft drivers, and many others—are considered employees for purposes of the coverage under the law;
4. Requirements that independent contractors wait 2 years after opting into the paid family leave system are waived for all purposes connected with the COVID-19 virus; and
5. With respect to essential services regarding domestic workers:

- a. in-home child care providers are not de facto considered part of the essential work force and may not be required by their employers to come to work; and
- b. home health care aides caring for sick or frail elderly shall be considered essential workers.

In order to help the implementation of the law proceed more smoothly, we further recommend that:

1. The NYS DOL issue immediate emergency regulations providing clarity for employers and employees as to what situations beyond the automatic orders referenced above would qualify a worker to receive these benefits and what situations do not;
2. A grid be created on the website dedicated to this program that lists common situations and whether they would qualify a worker for benefits or not. (Employees isolating due to positive test; exposure and waiting test results; exposure to someone who tested positive; age or compromise immune system, etc.);
3. With respect to TDI/PFL benefits, step-by step instructions be provided on how to complete the necessary forms to apply for benefits;
4. A printable notice be provided that outlines employer responsibilities under the law for workers to show to their employers;
5. Information on recourse for employees if employers do not comply with the law (We appreciate the publication of a form for this purpose as of this week);
6. Community groups and legal services be engaged in outreach and education efforts.
7. All information be provided in multiple languages.

We also would like to see emergency orders or subsequent legislation to address the additional and critical needs of members of the workforce that were not foreseen or addressed in the original legislation. These include:

1. Any employee who is advised to be home by an employer or a doctor because of exposure to someone who has tested positive, because of their personal status as high risk for the virus; or who has symptoms of the virus; and who cannot work from home, should immediately qualify for benefits.
2. Any employee who must be at home to care for children because of school closures ordered by a city, county or state official, and who cannot work from home, should qualify for benefits.
3. Any employee who is unable to work because of the need to care for a family member subject to quarantine or isolation, in addition to a minor dependent child, should qualify for benefits. (This is especially important since the elderly and those with underlying health conditions are most at risk of serious Covid-19 illness. While a worker could be eligible for paid family leave if a family member subject to quarantine or isolation is considered to have a serious health condition, paid family leave only provides partial wage replacement rather than the full pay (up to a cap) that is provided under the covid-19 paid sick leave law.)

We are all eagerly awaiting implementation of the federal emergency paid sick time benefits program on April 1. But New York is the epicenter of the virus right now. Delivering benefits to enable workers to stay at home is crucial at this moment. We urge you to let workers know there

will be support for them as they isolate themselves pursuant to the Governor's orders, as contemplated by the legislation passed last week.

Sincerely,

The New York Statewide Paid Leave Coalition

Attachment 1: List of coalition member organizations who have signed on to this letter