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New York Enacts Law Providing Job Protection and Pay for New Yorkers Quarantined as a Result of COVID-19

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To help our clients navigate the coronavirus (COVID-19) crisis, Keane & Beane is providing numerous Legal Alerts on a variety of issues. The information contained in this Legal Alert is applicable as of today, March 19, 2020. Many situations are so fact specific and nuanced that this Legal Alert only addresses some of the more pressing ongoing issues. The discussion below is therefore general and does not address all considerations and specific analyses that may need to be undertaken prior to taking action.

On March 18, 2020, Governor Cuomo signed a bill (S8091/A10153) into law providing job protections, sick leave and paid family leave/disability benefits to employees who are subject to mandatory or precautionary orders of quarantine/isolation. However, the law does not apply to employees deemed asymptomatic or who have not yet been diagnosed with any medical conditions and are physically able to work while under a mandatory or precautionary order of

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quarantine/isolation, whether through remote access or other similar means. The law takes effect immediately, a copy of which can be found [here](#).

Employees who are subject to a mandatory or precautionary order of quarantine/isolation issued by the State of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, shall be entitled to the following benefits, depending on the size of their employer:

- For employees of employers with ten (10) or fewer employees as of January 1, 2020, which had a net income of one million dollars or less in the prior tax year, unpaid sick leave until the termination of the period of quarantine/isolation due to COVID-19. Employees will also be entitled to immediately receive paid family leave and disability benefits¹ during the period of mandatory or precautionary quarantine/isolation.
- For employees of employers with ten (10) or fewer employees as of January 1, 2020, which had a net income of greater than one million dollars in the prior tax year, at least five (5) days of paid sick leave, without loss of accrued sick leave, and then unpaid sick leave until the termination of the period of quarantine/isolation due to COVID-19. After exhausting their paid sick leave, employees will be entitled to receive paid family leave and disability benefits during the remaining period of mandatory or precautionary quarantine/isolation.
- For employees of employers with between eleven (11) and ninety-nine (99) employees as of January 1, 2020, at least five (5) days of paid sick leave, without loss of accrued sick leave, and then unpaid sick leave until the termination of the period of quarantine/isolation due to COVID-19. After exhausting their paid sick leave,

¹ Pursuant to the Workers' Compensation Law, public employers are not required to provide paid family leave or disability benefits unless they opt-in to providing such benefits. For those public employers who have previously opted-in to providing such benefits, as well as private employers who are required to provide paid family leave and disability benefits, the law allows employees who are subject to a mandatory or precautionary order of quarantine/isolation to receive paid family leave benefits and disability benefits from the State concurrently, up to a maximum of \$840.70 per week in paid family leave benefits and \$2,043.92 per week in disability benefits.

employees will be entitled to receive paid family leave and disability benefits during the remaining period of mandatory/precautionary quarantine or isolation.

- For employees of employers with one hundred (100) or more employees as of January 1, 2020, at least fourteen (14) days of paid sick leave during any mandatory or precautionary order of quarantine/isolation without loss of accrued sick leave.
- For employees and officers of public employers,² regardless of size, at least fourteen (14) days of paid sick leave during any mandatory or precautionary order of quarantine/isolation, without loss of accrued sick leave.

The law does not explicitly provide for unpaid sick leave or paid family leave and disability benefits for employees of public employers, or employers with one hundred (100) or more employees, after the fourteen (14) days of paid sick leave. However, it is our opinion that such employees would be entitled to unpaid sick leave and/or paid family leave and disability benefits after the exhaustion of the fourteen (14) days of paid sick leave should they be ordered quarantined/isolated for more than fourteen (14) days. Moreover, employees of any employers, regardless of size, would be entitled to utilize their accrued sick leave after exhausting any paid sick leave provided under this law.

Notwithstanding the above, an employee who is subject to a mandatory or precautionary order of quarantine/isolation will not be entitled to any paid sick leave under the law in the following circumstances:

- The employee is returning from travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice; and

² "Public employer" is defined as: (i) the state; (ii) a county, city, town or village; (iii) a school district, board of cooperative educational services, vocational education and extension board or a school district as enumerated in section 1 of chapter 566 of the laws of 1967, as amended; (iv) any governmental entity operating a college or university; (v) a public improvement or special district including police or fire districts; (vi) a public authority, commission or public benefit corporation; or (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state.

- The travel was not part of the employee's employment or at the direction of his/her employer; and
- The employee was provided notice of this law, the travel health notice, and this limitation on the entitlement to paid sick leave prior to such travel.

Such employees shall only be eligible to use accrued leave provided by the employer, if any, or unpaid sick leave for the duration of the mandatory or precautionary quarantine/isolation.

In addition to the entitlement to sick leave and paid family leave and disability benefits set forth above, employees who are subject to a mandatory or precautionary order of quarantine/isolation must be restored to the positions they held prior to any leave taken due to the order with the same pay and terms and conditions of employment. Employers may not discharge, threaten, penalize, or in any other manner discriminate or retaliate against an employee because he/she has taken leave under the law.

The law also provides that it shall not be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, otherwise diminish the integrity of the existing collective bargaining relationship, or to prohibit any personnel action which otherwise would have been taken regardless of any request to use, or utilization of, any leave provided by the law. While not entirely clear, it is our opinion that this provision would allow employers to negotiate terms and conditions related to quarantined employees that provide a greater, but not lower, level of benefits. It would also allow employers to take adverse personnel action against employees provided such action is not due to the fact that the employee took leave under the law.

The law further provides that if a federal law or regulation is implemented that provides sick leave and/or employee benefits to employees related to COVID-19, then the law, and the requirements thereunder, including, but not limited to, the provision of paid sick leave, paid family leave benefits, and disability benefits, shall not apply, except to the extent that it

provides greater benefits than the federal law or regulation. In such a circumstance, employees shall receive the benefits under the federal law or regulation first, and may then claim such additional sick leave and/or employee benefits pursuant to the law, in an amount equal to the difference between this law and the federal law or regulation.

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (“FFCRA”) into law. In relevant part, the FFCRA provides that employers who employ 500 employees or less and all public employers must provide any employee who is subject to an order of quarantine/isolation with eighty (80) hours of paid sick leave if the employee is a full-time employee or, if a part-time employee, a number of paid sick leave hours equal to what the employee works, on average, over a two (2) week period. Under the FFCRA, an employee may not be required to utilize his/her leave accruals prior to accessing the leave provided under the Act. Paid sick leave under the FFCRA is calculated based on the employee’s regular compensation, except that it is capped at \$511 per day and \$5,110 in the aggregate.

The paid sick leave required under the law that is the subject of this Legal Alert (“this law”) and the FFCRA differ in a number of important respects. First, the FFCRA provides for paid sick leave on the basis of hours, whereas this law provides for paid sick leave on the basis of days. Moreover, the FFCRA provides greater benefits to the extent that it requires all employers with 500 employees or less to provide paid sick leave to employees subject to an order of quarantine/isolation and does not allow smaller employers to provide less paid leave to such employees.³ However, this law provides greater benefits to the extent that it does not have a cap on the amount of compensation that an employee may receive per day or in the aggregate and also requires public employers and employers with 100 or more employees to provide at least fourteen (14) days of sick leave to employees under an order of quarantine/isolation. The interplay of the differences between this law and the FFCRA will require employers to review each employee’s entitlement to paid sick leave under both on a case by case basis, to determine whether the employee is entitled to additional benefits under this law. We urge you to consult with our office with any questions

³ The Secretary of Labor is authorized to issue regulations exempting employers with fewer than 50 employees.

regarding an employee's entitlement to paid sick leave under the FFCRA and this law. A separate legal alert regarding the FFCRA, which provides paid sick leave to a broader range of employees than this law, and also expands the Family Medical Leave Act, will be issued by our office.

Prior Keane & Beane COVID-19 Legal Alerts

Keane & Beane, P.C. has prepared several Legal Alerts concerning the State's response to COVID-19 and the impacts on local governments. Our Legal Alerts are available at the links below:

- [Governor Cuomo Announces a Mandated Reduction in the Workforce of Private Businesses in New York State](#)
- [Executive Order 202.4 – COVID-19: Reduction in Workforce By Municipalities](#)
- [Open Meetings Law in Light of COVID-19](#)
- [COVID-19 Issues for Municipalities](#)
- [Updates From Governor's March 16, 2020 Press Conference](#)

Consult Counsel Regarding Specific Questions

Given the fluidity of this rapidly developing situation, we encourage you to reach out to a member of the Keane & Beane Public Sector Practice Group with questions regarding specific situations. We note that there are legislative developments in Congress and New York which impact each of these questions, and which we are closely monitoring. Because of the frequent developments, you should consult counsel regarding specific questions.

For questions on employment and labor issues contact [William Kang, Esq.](#) or [Lance H. Klein](#) and on general municipal issues contact [Nicholas M. Ward-Willis, Esq.](#) or [Drew Victoria Gamils, Esq.](#) or any other attorney in our Public Law Sector Practice Group.