

# EMPLOYER ALERT:

## New York Law Imposes Paid Sick Leave Obligations due to Coronavirus Outbreak

On March 18, 2020, while the U.S. Congress was passing and the President was signing the Families First Coronavirus Response Act, New York State joined the fray and also enacted legislation to impose an obligation to provide certain sick leave benefits. This law was proposed, considered and approved by the State Legislature, and signed by Governor Cuomo, all on March 18, 2020. The obligations imposed by the New York paid sick leave law are effective immediately.

**New York paid sick leave benefits are ONLY available to an employee who has been Quarantined or Isolated by an order issued by a qualified government official.**

To be clear, the New York sick leave law benefits are only available to individuals who are subject to “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 duly authorized to issue such order due to COVID-19.”

**If the employee at issue is not subject to a quarantine or isolation order, they are NOT entitled to paid sick leave benefits under the New York law.**

Such individuals will be referred to herein as “an employee subject to an order.”

The following is a summary of the requirements of New York’s new sick leave requirements.

### **1. Employers with 10 or Fewer Employees**

- An employer with 10 or fewer employees on January 1, 2020, must provide ***unpaid*** sick leave to an employee subject to an order until the quarantine/isolation order is terminated.
- These employees may be eligible for paid family leave and/or disability benefits under the New York law, and employees should be permitted to apply for those benefits. Thus, this is not a benefit that an employer pays directly; the benefit is paid by the disability insurer.

### **2. Employers with 10 or Fewer Employees with High Net Income OR Employers with 11-99 Employees**

- If an employer has 10 or fewer employees on January 1, 2020 and had a net income of greater than one million dollars (\$1,000,000) in the previous tax year, **OR** the employer has between eleven (11) and ninety-nine (99) employees, the employer must provide an employee subject to an order with five ***paid*** sick days and then ***unpaid*** leave until the quarantine/isolation order is terminated.
- The ***paid*** sick days are paid by the employer (at the employer’s expense) through normal payroll. This paid sick leave benefit must be provided without loss of an employee’s accrued

sick leave benefit (*i.e.*, benefits provided by the employer as part of the employee's terms and conditions of employment).

- During the period of **unpaid** leave (after the 5 paid sick days), these employees may be eligible for paid family leave and/or disability benefits under the New York law, and employees should be permitted to apply for those benefits. Thus, this is not a benefit that an employer pays directly; the benefit is paid by the disability insurer.

### **3. Employers with 100 or More Employees**

- If an employer has 100 or more employees on January 1, 2020, the employer must provide an employee subject to an order with up to fourteen (14) **paid** sick days and then **unpaid** leave until the quarantine/isolation order is terminated.
- The **paid** sick days are paid by the employer (at the employer's expense) through normal payroll. This paid sick leave benefit must be provided without loss of an employee's accrued sick leave benefit (*i.e.*, benefits provided by the employer as part of the employee's terms and conditions of employment).
- While the statute does not specifically state as much, the employee may be eligible for paid family leave and/or disability benefits under New York law during the period of **unpaid** leave (after the 14 **paid** sick days), and employees should be permitted to apply for those benefits. Paid family leave and disability benefits are not benefits that an employer pays directly; the benefit is paid by the disability insurer.

### **4. IMPORTANT EXCEPTION for Asymptomatic Employees**

- An employee is **NOT** eligible for the paid sick leave benefits provided by this law if:
  - The individual is an employee subject to an order, BUT
  - is deemed asymptomatic (*i.e.*, does not have any symptoms of coronavirus), and
  - is physically able to perform the work assigned by the employer, whether through remote means or other similar means.

### **5. Additional Rules of under This New York Law**

- An employee returning to work from a leave discussed herein (whether use of employer-provided **paid** sick leave benefits, a period of **unpaid** leave, use of paid family leave benefits or disability benefits as required by the New York law) must be restored to the position they held before their absence with the same pay and other terms and conditions of employment.
- Employers are prohibited from discharging, threatening, discriminating against, retaliating against or otherwise taking any adverse employment action against an employee because they utilize any of the sick leave benefits provided under New York law.
- Employees who engaged in certain, non-work related overseas travel after this law was enacted may be ineligible for paid benefits under the New York law. If you have any employees who engaged in such travel, contact us to discuss whether the employee is eligible for paid sick leave benefits.
- The Department of Labor is authorized to issue regulations regarding the paid sick leave benefits provided by the law. Employers should be watchful for updates based on any such regulations issued by the Department of Labor.
- An employee who is entitled to paid family leave or disability benefits under New York law is immediately eligible for such benefits (as the waiting period has been eliminated for

coronavirus affected individuals), and such benefits may be paid concurrently if the employee is eligible for both benefits. The statutory caps for an employee's weekly benefit entitlement is \$840.70 for paid family leave and \$2,043.92 for disability benefits. But, remember, the employer's disability insurer will decide an individual's eligibility for benefits and the amount of benefits.

- Finally, the State law also provides that if a Federal law provides sick leave or other benefits due to the coronavirus pandemic, then the paid sick leave, paid family leave and disability benefits provided under the State law shall not be available. However, if the benefits provided by State law exceed those provided under the Federal law, then the employee is still entitled to the difference between the Federally-provided leave benefits and those available under the State law.

6. **Changes to Unemployment Insurance Benefit Claims**—This law also officially eliminated the waiting period for an unemployment insurance claim if the claim occurred because the employer closed for a reason related to the coronavirus or the employer closed because of a government order related to the coronavirus (such as Governor Cuomo's Executive Orders).

**Even though New York paid sick leave benefits are ONLY available to an employee who has been quarantined or isolated by an order issued by a qualified government official, an employee MAY have an independent right to New York disability benefits or benefits under the New York Paid Family Leave Law.**

#### **What Should An Employer Do If Employee Is Not Qualified for New York Paid Sick Leave?**

Where an employee is not eligible for New York paid sick leave benefits, the employer's best course is to allow the employee to apply for New York disability benefits or New York paid family leave, thereby allowing the disability insurer the right to determine the employee's eligibility for benefits.

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#### **Interplay of New York Sick Leave Benefit Law and the Federal Families First Coronavirus Response Act**

In a previous **EMPLOYER ALERT**, the requirements of the Federal Families First Coronavirus Response Act were discussed at length. With the new requirements imposed by New York State (which, in some cases, exceed the rights provided by Federal law), employers need to ensure that they are meeting all of their obligations between all three requirements.

#### **THE BOTTOM LINE**

The most fundamental difference between the Families First Coronavirus Response Act and the New York sick leave law is that the New York law only applies to individuals who are subject to a mandatory or precautionary order of quarantine or isolation issued by a qualifying governmental entity. (*i.e.*, an employee subject to an order). If the employee is NOT subject to an order, then they are not entitled to paid sick leave benefits under New York law; however, the employee may be eligible for paid family leave or disability benefits under New York law and the employee should be permitted to apply for such benefits.

On the other hand, the Families First Coronavirus Response Act provides far-ranging benefits (both paid and unpaid) for a greater array of employees, including employees who are NOT personally sick and those who need a leave because their child's school (or day care) is closed.

Moreover, all of the paid benefits provided under the Families First Coronavirus Response Act are paid by the employer, while some of the benefits provided by the New York law are employer-provided and others are paid through insurance coverage (for paid family leave or disability benefits under State law).

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Without a doubt, the matrix of rights, benefits and rules established by New York's new paid sick leave law, along with those provided by Families First Coronavirus Response Act, are complex and intricate. This **EMPLOYER ALERT**, along with the **ALERT** issued yesterday concerning the Families First Coronavirus Response Act, provide a summary of the applicable rights, benefits and rules. We are prepared to help employers navigate these dueling requirements and ensure your compliance with applicable law. Moreover, we are on the watch for new legislation and regulations that may be enacted to deal with the unprecedented pandemic now ensnaring the globe.

If you have any questions regarding the New York paid sick leave law, the requirements of the Families First Coronavirus Response Act, or any other issues concerning labor and employment law (especially as a result of the coronavirus outbreak), please do not hesitate to contact us for assistance.



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