



FORCHELLI  
DEEGAN  
TERRANA

GREGORY S. LISI  
PARTNER  
GLISI@FORCHELLILAW.COM

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**SENATE PASSES THE HOUSE CORONA VIRUS BILL AND IT IS NOW BEING SENT  
TO PRESIDENT DONALD TRUMP FOR HIS EXPECTED SIGNATURE**

The Senate just passed the “Families First Coronavirus Response Act,” and it is now heading to President Donald J. Trump for his expected signature. For employers with less than 500 employees, this bill provides additional leave benefits for certain employees;

*A. Expanded Family Medical Leave Act Benefits*

The bill expands the leave benefits under the existing Family Medical Leave Act. The existing Family Medical Leave Act, which applies to employers with 50 or more employees, provides for 12 weeks of job protected unpaid leave for certain qualifying events. This bill provides employees with up to 12 weeks of job protected partially paid leave if they:

- (a) test positive for Coronavirus;
- (b) are caring for a family member (defined as a parent, spouse or child, or a sibling, next of kin or grandparent if they are either pregnant, a senior citizen or have a disability) who has been infected with Coronavirus; or
- (c) are caring for a child or another dependent due to a school or facility closing.

This bill provides that employees who take leave for one of these qualifying events may receive two-third of their average monthly earnings, with a cap of \$4,000, for up to 12 weeks. This benefit is retroactive to January 19, 2020. This expanded Family Medical Leave benefit applies to any employer with less than 500 employees, including employers with less than 50 employees. However, for employers with less than 50 employees they do not have to provide this benefit, if providing the benefit would jeopardize the viability of such employer’s business. Additionally, except as discussed below, the employees position must be restored upon the employees return to work during the 12 week period.

Companies with less than 25 employees do not have to comply with the FMLA’s job restoration requirements if: (a) An employee takes public health emergency leave; (b) the employee’s position when they begin leave does not exist due to economic conditions or other changes in the employer’s operating conditions that: (1) affect employment and (2) are caused by a public health emergency during the leave period; and (c) the employer makes reasonable efforts to restore the employee to a position equivalent to one they held when leave began (*i.e.*,

equivalent benefits, pay, terms and conditions of employment). However, the employer would have to contact the employee if a similar position becomes available over the next 12 months.

To be eligible for this benefit the employee must be employed for at least 30 days. This benefit only extends through December 31, 2020. The first 14 days of this leave may be unpaid, but the employees may elect to use accrued paid time off or the Paid Emergency Sick Leave (discussed below).

#### *B. Paid Emergency Sick Leave*

The bill also provides for employees with 2 weeks (80 hours for fulltime employees) paid emergency sick leave to allow employees to: (a) self-isolate because they have been diagnosed with Coronavirus; (b) obtain a medical diagnosis for coronavirus; (c) comply with a recommendation or order by a public health office to self-isolate; (d) care or assist a family member of an employee who: (i) is self-isolating due to a diagnosis of coronavirus; or (ii) is experiencing symptoms of coronavirus; or (e) care for a child if the school or place of care has been closed or the caregiver is unavailable due to coronavirus. This benefit is only available to people working at companies with fewer than 500 employees. Small businesses (defined as having 50 employees or less) would be reimbursed for providing the 14 days of additional paid sick leave. This paid sick time does not carryover from one year to the next.

For employers that already offer sick leave, this emergency paid sick leave must be provided in addition to existing sick leave policies and employers may not make changes to their existing policies to avoid offering additional paid leave. Also, an employee using this paid sick leave is not required to find coverage for their time they must be out of work. The employee also is not required to use existing sick leave before using this additional sick leave benefit.

#### *C. Differences Between the Federal and State Statutes*

There are several differences between the state and federal statutes. The New York State statute is limited to a maximum of 14 days of leave needed for employees who must self-quarantine or isolate. Further, only employees with over 100 employees are required to pay the full 14 days of leave. As summarized in this chart, the state statute provides that the amount of paid leave provided depends on the size of the employer.

<b>Number of Employees</b>	<b>COVID-19 Quarantine Benefit</b>
10 or less	Unpaid leave provided for the duration of the mandatory or precautionary period of isolation or quarantine.
10 or less, with annual net income in excess of \$1 million	5 days of paid leave, and unpaid leave for the remaining period of the mandatory or precautionary period of isolation or quarantine.

11 to 99	5 days of paid leave, and unpaid leave for the remaining period of the mandatory or precautionary period of isolation or quarantine.
100 or more	14 days of paid leave
Public Employers	14 days of paid leave

The state statute does not provide for up to 12 weeks of paid leave as the expanded FMLA leave in the federal statute provides. Also, the state statute has carveouts for employees that are required to isolate but otherwise able to perform their jobs remotely, and those employees who voluntarily traveled to an affected country for personal reasons.

The state statute provides that in the event a federal statute is passed, then the federal statute would apply. However, to the extent that the state benefits are more generous, the employees would be entitled to the difference.

The attorneys in Forchelli Deegan Terrana LLP's Labor and Employment Department will continue to keep you updated on any changes to your requirements as an employer as updates become available. Should you have any questions, do not hesitate to contact us. Battling the novel coronavirus is difficult for everyone. We are here if you need us.

With best wishes for your, and your family's health and safety.

Regards,

Gregory S. Lisi, Esq.