

March 2020

Client Advisory

New York Provides Sick Leave and Benefits for Certain Employees

On March 18, 2020, Governor Cuomo signed legislation into law, effective immediately, that would provide sick leave and some benefits for employees in New York subject to mandatory or precautionary orders of quarantine or isolation due to COVID-19 issued by the State of New York, Department of Health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19. This is critical as Governor Cuomo has announced today that all employees of non-essential businesses are required to stay home, effective Sunday evening.

Notably, this law was signed into legislation before the federal “Families First Coronavirus Response Act” (the “Federal Act”) was signed into law. You can read Archer’s Alert on the Federal Act [here](#). To the extent any employee qualifies for leave and benefits under the Federal Act, they do not then qualify for leave and benefits under New York’s law unless such benefits and leave would be *in excess* to those under the federal law. Also, note that the Federal Law does not apply to certain employers (e.g. private employers with 500 or more employees), then the NY law will apply in its entirety to such employers.

The amount of paid or unpaid sick leave an employer must provide depends on how many employees the employer had as of January 1, 2020. Employers with ten or fewer employees must provide unpaid sick leave during the ordered quarantine or isolation until the order for same is terminated. Employers with ten or fewer employees that had a net income of greater than one million dollars in the previous tax year, must provide five days of paid sick leave and then unpaid sick leave for the remainder of the ordered quarantine or isolation. Employers with between 11 and 99 employees must also provide five days of paid sick leave and then unpaid sick leave for the remainder of the ordered quarantine or isolation. Employers with 100 or more employees and public employers must provide at least 14 days of paid sick leave.

Employees on unpaid sick leave due to ordered quarantine or isolation will be eligible for paid family leave benefits or disability benefits, both of which have weekly caps. Employees on any type of sick leave must be restored to their same position with the same pay, terms, and conditions they had before the leave upon return to work. The law prohibits discrimination and retaliation against employees who take leave under this law. The law indicates that the order to quarantine or isolate is sufficient documentation to support an employee’s leave request.

However, the law does not require employers to provide paid sick leave benefits to employees ordered to quarantine or isolate because the “employee has returned to the United

States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee’s employment or at the direction of the employee’s employer, and if the employee was provided notice of the travel health notice and the limitations of” the law prior to such travel. These employees are eligible to use accrued time off that the employer already provides or unpaid sick leave.

Further, the law expands disability, for purposes of benefits, to include ordered quarantines and isolations due to COVID-19, and expands family leave to include ordered quarantines and isolations due to COVID-19 for the employee or for the employee’s minor dependent child. The law also waives the waiting period for unemployment benefits for those employees applying as a result of their employer being ordered to close or choosing to close for reasons related to COVID-19.

If you have any questions about New York’s new sick leave requirements related to COVID-19, or its impact on your business, please contact one of the attorneys in our [Labor and Employment Group](#) or any member of [Archer’s COVID-19 Task Force](#) with any questions you may have.

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