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TO: **Memo Distribution List**

LeadingAge New York

FROM: Hinman Straub P.C.

DATE: March 18, 2020

RE: Paid Sick Leave Law

NATURE OF THIS INFORMATION: This is information explaining new requirements you need to be aware of or implement.

DATE FOR RESPONSE OR IMPLEMENTATION: Effective immediately.

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Elena DeFio Kean and Kristin Foust

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: #7 Legislature (NYS)

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On March 18, 2020, Governor Andrew Cuomo introduced legislation providing protections to employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19, and requiring both private and public employers to provide sick leave to those impacted employees, the amount of leave and whether paid or unpaid to be determined based on the size of the employer (hereinafter “the COVID-19 Sick Leave Law”). It has been passed by the Senate, and is being debated by the Assembly presently. We would anticipate that the Governor will sign it later tonight or tomorrow. This memorandum will review the details of the new law. The full text of the [law](#) and the [sponsor’s memorandum](#) are available.

Additionally, as part of the 2020-2021 proposed budget, it is anticipated that Governor Cuomo will be advancing a bill to amend New York’s Labor Law, requiring all employers to provide employees with sick leave every calendar year, the amount of leave and whether paid or unpaid to be determined based on the size of the employer. Hinman Straub will continue to monitor this bill and provide pertinent updates as received.

COVID-19 Sick Leave Law

The COVID-19 Sick Leave Law will be effective immediately. It will require employers to provide sick leave to each employee who is 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 issued such order due to COVID-19. The type of sick leave provided will be based upon the number of employees, an employer had as of January 1, 2020.

1. Employers with ten (10) or fewer employees must provide unpaid sick leave until the termination of the employee’s mandatory or precautionary order of quarantine or isolation. During this period of unpaid leave, the employee is eligible for paid family leave and disability benefits. (Section 1(a)).
2. Employers with ten (10) or fewer employees with a net income of greater than one (1) million dollars in the previous tax year, must provide at least five (5) days of paid sick leave, and unpaid leave thereafter, until the termination of the employee’s mandatory or precautionary order of quarantine or isolation. After the five (5) days of paid leave, the employee is eligible for paid family leave and disability benefits. (Section 1(a)).
3. Employers with between eleven (11) and ninety-nine (99) employees, must provide at least five (5) days of paid sick leave, and unpaid leave thereafter, until the termination of the employee’s mandatory or precautionary order of quarantine or isolation. After the five (5) days of paid leave, the employee is eligible for paid family leave and disability benefits. (Section 1(b)).
4. Employees with one hundred (100) or more employees, must provide at least fourteen (14) days of paid sick during the mandatory or precautionary order of quarantine or isolation.

Significantly, employers with 100 or more employees are not required to provide unpaid sick leave after the 14 paid days have been exhausted and the employee is still subject to the mandatory or precautionary order of quarantine. Additionally, the COVID-19 Sick Leave Law does not provide that employees who work for an employer with 100 or more employees, as compared to employers with less than 100 employees, will be eligible to apply for paid family leave or disability benefits after such paid leave has been utilized.

Public Employers

The COVID-19 Sick Leave Law also applies to public employers, 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. (Section 1 (d)).

Public employers are required to provide at least fourteen (14) days of paid sick leave during the mandatory or precautionary order of quarantine or isolation. Every employee will be compensated based on their regular rate of pay for their regular hours worked during their absence. (Section 1 (d)). However, the law does not include the ability for public employees to take additional time off, either unpaid, if there are not available accruals, or use existing accruals. Since Paid Family leave or NYS Disability is not applicable to municipal entities unless they had previously opted in, their employees will be limited to the fourteen (14) days paid sick leave as well as any other contractual rights they may have to time off.

In fact, this law does not diminish right of the public employers and employees under an existing Collective Bargaining Agreement (“CBA”). (Section 14). Thus, if a CBA exists between a public employer, or any private employer and a bargaining unit, there could be potential limits on an employee’s ability to use time off after the initial fourteen paid days has been exhausted. Employees and Employers should review the applicable provisions of their CBA.

Job Protection

Under the COVID-19 Sick Leave Law, an employee utilizing sick leave under this new law will be entitled to job protection and “shall be restored by his or her employer to the position of employment held by the employee prior to any leave taken . . . with the same pay and other terms and conditions of employment.” (Section 3). Additionally, employers are prohibited from “dischar[ing], threaten[ing], penalize[ing], discriminat[ing] or retaliat[ing] against any employee because such employee has taken leave pursuant to this [law].” (Section 4).

Interplay with Paid Family Leave and Disability Law

The COVID-19 Sick Leave Law also expands the definition of “disability” under the worker’s compensation law to include eligibility for disability benefits where the employee is unable to perform their regular duties because of a mandatory or precautionary quarantine or isolation, even if they have available leave accruals (that are not mandatory under this law) from their employer. (Section 6). All disability benefits will be payable on the first day of disability. (Section 7).

With respect to disability and Paid Family leave benefits, an employee will be eligible on day one (1), as opposed to waiting seven (7) days to receive the benefit. (Section 9). Section 9 provides that an employee can collect the maximum payment from both Paid Family leave and disability benefits, not to exceed \$840.70 in paid family leave and \$2,042.92 in benefits due pursuant to disability per week. (Section 9). However, the law provides that the maximum weekly benefit which the employee is entitled to receive for benefits due pursuant to disability as a result of “mandatory or precautionary order of quarantine or isolation” “shall be the difference between the maximum weekly family leave benefit and such employee’s total average weekly wage from each covered employer up to a maximum benefit due pursuant to disability of \$2,043.92 per week.” (Section 10).

A mandatory or precautionary order of quarantine or isolation shall be sufficient proof of disability or proof of need for family leave taken pursuant to this act. (Section 12). However, the law further states that employees will not be eligible for sick leave “where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means.” (Section 13). These provisions of the law appear to incongruous since an individual may be considered disabled for benefits purposes, but still be able to work remotely and be asymptomatic, and thus, not eligible for sick leave under the law.

Exclusion

Pursuant to the COVID-19 Sick Leave Law, an employee will not be entitled to paid sick leave or any other paid benefits as allowed by this law, where “the employee is subject to a mandatory or precautionary order of quarantine 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 this subdivision prior to such travel.***” (Section 4) (*emphasis added*). In this instance, the employee may utilize accrued leave provided by their employer or unpaid sick leave for the duration of the quarantine or isolation. (Id.). However, it is unclear how the employer will determine if an employee was notified of the particular travel advisory.

Future Regulations and Guidance

The commissioner of labor is empowered under the COVID-19 Sick Leave Law to adopt regulations, including emergency regulations, as well as to issue guidance to clarify the effect of the COVID-19 sick leave law. Hinman Straub will continue to monitor same and provide updates as they are issued by the commissioner of labor.

If you have any additional questions, please contact Sean Doolan, Esq. (sdoolan@hinmanstraub.com), Elena DeFio Kean, Esq. (ekean@hinmanstraub.com) or Kristin Foust, Esq. (kfoust@hinmanstraub.com) at (518) 436-0751.

STATE OF NEW YORK

8091

IN SENATE

March 18, 2020

Introduced by Sen. RAMOS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. 1.(a) For employers with ten or fewer employees as of Janu-
2 ary 1, 2020, each employee who is subject to a mandatory or precau-
3 ary order of quarantine or isolation issued by the state of New York,
4 the department of health, local board of health, or any governmental
5 entity duly authorized to issue such order due to COVID-19, shall be
6 provided with unpaid sick leave until the termination of any mandatory
7 or precautionary order of quarantine or isolation due to COVID-19 and
8 any other benefit as provided by any other provision of law. During the
9 period of mandatory or precautionary quarantine or isolation, an employ-
10 ee shall be eligible for paid family leave benefits and benefits due
11 pursuant to disability pursuant to this act. An employer with ten or
12 fewer employees as of January 1, 2020, and that has a net income of
13 greater than one million dollars in the previous tax year, shall provide
14 each employee who is subject to a precautionary or mandatory order of
15 quarantine or isolation issued by the state of New York, the department
16 of health, local board of health, or any governmental entity duly
17 authorized to issue such order due to COVID-19, at least five days of
18 paid sick leave and unpaid leave until the termination of any mandatory
19 or precautionary order of quarantine or isolation. After such five days
20 of paid sick leave, an employee shall be eligible for paid family leave
21 benefits and benefits due pursuant to disability pursuant to this act.
22 (b) For employers with between eleven and ninety-nine employees as of
23 January 1, 2020, each employee who is subject to a mandatory or precau-
24 tionary order of quarantine or isolation issued by the state of New
25 York, the department of health, local board of health, or any govern-
26 mental entity duly authorized to issue such order due to COVID-19, shall

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

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1 be provided with at least five days of paid sick leave and unpaid leave
2 until the termination of any mandatory or precautionary order of quaran-
3 tine or isolation. After such five days of paid sick leave, an employee
4 shall be eligible for paid family leave benefits and benefits due pursu-
5 ant to disability pursuant to this act.

6 (c) For employers with one hundred or more employees as of January 1,
7 2020, each employee who is subject to a mandatory or precautionary order
8 of quarantine or isolation issued by the state of New York, the depart-
9 ment of health, local board of health, or any governmental entity duly
10 authorized to issue such order due to COVID-19, shall be provided with
11 at least fourteen days of paid sick leave during any mandatory or
12 precautionary order of quarantine or isolation.

13 (d) For public employers, each officer or employee who is subject to a
14 mandatory or precautionary order of quarantine or isolation issued by
15 the state of New York, the department of health, local board of health,
16 or any governmental entity duly authorized to issue such order due to
17 COVID-19 shall be provided with at least fourteen days of paid sick
18 leave during any mandatory or precautionary order of quarantine or
19 isolation. Each officer or employee shall be compensated at his or her
20 regular rate of pay for those regular work hours during which the offi-
21 cer or employee is absent from work due to a mandatory or precautionary
22 order of quarantine or isolation due to COVID-19. For purposes of this
23 act, "public employer" shall mean the following: (i) the state; (ii)
24 a county, city, town or village; (iii) a school district, board of
25 cooperative educational services, vocational education and extension
26 board or a school district as enumerated in section 1 of chapter 566
27 of the laws of 1967, as amended; (iv) any governmental entity operating
28 a college or university; (v) a public improvement or special district
29 including police or fire districts; (vi) a public authority, commis-
30 sion or public benefit corporation; or (vii) any other public corpo-
31 ration, agency, instrumentality or unit of government which exercises
32 governmental power under the laws of this state.

33 (e) Such leave shall be provided without loss of an officer or employ-
34 ee's accrued sick leave.

35 2. For purposes of this act, "mandatory or precautionary order of
36 quarantine or isolation" shall mean a mandatory or precautionary order
37 of quarantine or isolation issued by the state of New York, the depart-
38 ment of health, local board of health, or any government entity duly
39 authorized to issue such order due to COVID-19.

40 3. Upon return to work following leave taken pursuant to this act, an
41 employee shall be restored by his or her employer to the position of
42 employment held by the employee prior to any leave taken pursuant to
43 this act with the same pay and other terms and conditions of employment.
44 No employer or his or her agent, or the officer or agent of any corpo-
45 ration, partnership, or limited liability company, or any other person,
46 shall discharge, threaten, penalize, or in any other manner discriminate
47 or retaliate against any employee because such employee has taken leave
48 pursuant to this act.

49 4. An employee shall not receive paid sick leave benefits or any other
50 paid benefits provided by any provisions of this section if the employee
51 is subject to a mandatory or precautionary order of quarantine because
52 the employee has returned to the United States after traveling to a
53 country for which the Centers for Disease Control and Prevention has a
54 level two or three travel health notice and the travel to that country
55 was not taken as part of the employee's employment or at the direction
56 of the employee's employer, and if the employee was provided notice of

1 the travel health notice and the limitations of this subdivision prior
2 to such travel. Such employee shall be eligible to use accrued leave
3 provided by the employer, or to the extent that such employee does not
4 have accrued leave or sufficient accrued leave, unpaid sick leave shall
5 be provided for the duration of the mandatory or precautionary quaran-
6 tine or isolation.

7 5. The commissioner of labor shall have authority to adopt regu-
8 lations, including emergency regulations, and issue guidance to effectu-
9 ate any of the provisions of this act. Employers shall comply with regu-
10 lations promulgated by the commissioner of labor for this purpose which
11 may include, but is not limited to, standards for the use, payment, and
12 employee eligibility of sick leave pursuant to this act.

13 6. Notwithstanding any other provision of law, and for purposes of
14 this act only, for purposes of article 9 of the workers' compensation
15 law, "disability" shall mean: any inability of an employee to perform
16 the regular duties of his or her employment or the duties of any other
17 employment which his or her employer may offer him or her as a result of
18 a mandatory or precautionary order of quarantine or isolation issued by
19 the state, the department of health, a local board of health, or any
20 government entity duly authorized to issue such order due to COVID-19
21 and when the employee has exhausted all paid sick leave provided by the
22 employee's employer under this act.

23 7. Notwithstanding subdivision 1 of section 204 of the workers'
24 compensation law, disability benefits payable pursuant to this act shall
25 be payable on the first day of disability.

26 8. Notwithstanding any other provision of law, and for purposes of
27 this act only, for purposes of article 9 of the workers' compensation
28 law, "family leave" shall mean: (a) any leave taken by an employee from
29 work when an employee is subject to a mandatory or precautionary order
30 of quarantine or isolation issued by the state, the department of
31 health, a local board of health, or any government entity duly author-
32 ized to issue such order due to COVID-19; or (b) to provide care for a
33 minor dependent child of the employee who is subject to a mandatory or
34 precautionary order of quarantine or isolation issued by the state, the
35 department of health, a local board of health, or any government entity
36 duly authorized to issue such order due to COVID-19.

37 9. Notwithstanding any other provision of law, and for purposes of
38 this act only, for purposes of article 9 of the workers' compensation
39 law, disability and family leave benefits pursuant to this act may be
40 payable concurrently to an eligible employee upon the first full day of
41 an unpaid period of mandatory or precautionary order of quarantine or
42 isolation issued by the state of New York, the department of health, a
43 local board of health, or any government entity duly authorized to issue
44 such order due to COVID-19, provided however, an employee may not
45 collect any benefits that would exceed \$840.70 in paid family leave and
46 \$2,043.92 in benefits due pursuant to disability per week.

47 10. Notwithstanding any other provision of law, and for purposes of
48 this act only, for purposes of article 9 of the workers' compensation
49 law, the maximum weekly benefit which the employee is entitled to
50 receive for benefits due pursuant to disability pursuant to subdivision
51 six of this section only shall be the difference between the maximum
52 weekly family leave benefit and such employee's total average weekly
53 wage from each covered employer up to a maximum benefit due pursuant to
54 disability of \$2,043.92 per week.

55 11. Notwithstanding subdivision 7 of section 590, and subdivision 2 of
56 section 607, of the labor law, a claim for benefits under article 18 of

1 the labor law due to closure of an employer otherwise subject to this
2 section for a reason related to COVID-19 or due to a mandatory order of
3 a government entity duly authorized to issue such order to close such
4 employer otherwise subject to this section, shall not be subject to a
5 waiting period for a claim for benefits pursuant to such title.

6 12. A mandatory or precautionary order of quarantine or isolation
7 issued by the state, the department of health, a local board of health,
8 or any government entity duly authorized to issue such order due to
9 COVID-19 shall be sufficient proof of disability or proof of need for
10 family leave taken pursuant to this act.

11 13. The provisions of this act shall not apply in cases where an
12 employee is deemed asymptomatic or has not yet been diagnosed with any
13 medical condition and is physically able to work while under a mandatory
14 or precautionary order of quarantine or isolation, whether through
15 remote access or other similar means.

16 14. Nothing in this section shall be deemed to impede, infringe,
17 diminish or impair the rights of a public employee or employer under any
18 law, rule, regulation or collectively negotiated agreement, or the
19 rights and benefits which accrue to employees through collective
20 bargaining agreements, or otherwise diminish the integrity of the exist-
21 ing collective bargaining relationship, or to prohibit any personnel
22 action which otherwise would have been taken regardless of any request
23 to use, or utilization of, any leave provided by this act.

24 15. Notwithstanding any inconsistent provision of law, on or before
25 June 1, 2020, the superintendent of financial services by regulation, in
26 consultation with the director of the state insurance fund and the chair
27 of the workers' compensation board of the state, shall promulgate regu-
28 lations necessary for the implementation of a risk adjustment pool to be
29 administered directly by the superintendent of financial services, in
30 consultation with the director of the state insurance fund and the chair
31 of the workers' compensation board of the state. "Risk adjustment pool"
32 as used in this subdivision shall mean the process used to stabilize
33 member claims pursuant to this act in order to protect insurers from
34 disproportionate adverse risks. Disproportionate losses of any members
35 of the risk adjustment pool in excess of threshold limits established by
36 the superintendent of financial services of the state may be supported,
37 if required by the superintendent, by other members of such pool includ-
38 ing the state insurance fund in a proportion to be determined by the
39 superintendent. Any such support provided by members of the pool shall
40 be fully repaid, including reasonable interest, through a mechanism and
41 period of time to be determined by the superintendent of financial
42 services.

43 16. (a) The superintendent of financial services, in consultation
44 with the director of the state insurance fund and the chair of the work-
45 ers' compensation board shall issue two reports assessing the risk
46 adjustment pool required by this act.

47 (b) On or before January 1, 2022, an initial report shall be provided
48 to the speaker of the assembly, the chair of the assembly ways and means
49 committee and the chair of the assembly labor committee, the temporary
50 president of the senate, the chair of the senate finance committee and
51 the chair of the senate labor committee. Such report shall include:
52 the total number of claims filed pursuant to this section for (i) family
53 leave benefits, and (ii) benefits due to disability, as a result of a
54 mandatory or precautionary order of quarantine or isolation due to
55 COVID-19; the aggregate amount of paid family leave claims and disabili-
56 ty claims; the total amount of the claims paid for out of the risk

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1 adjustment pool; the threshold limits established by the department of
2 financial services; and any other information the superintendent of
3 financial services deems necessary to provide to the legislature.

4 (c) On or before January 1, 2025, a final report shall be provided to
5 the speaker of the assembly, the chair of the assembly ways and means
6 committee and the chair of the assembly labor committee, the temporary
7 president of the senate, the chair of the senate finance committee and
8 the chair of the senate labor committee. Such report shall include the
9 balance of the risk adjustment pool, if any, the total amount collected
10 through the repayment mechanism established by the department of finan-
11 cial services including interest; and any other information the super-
12 intendent of financial services deems necessary to provide to the legis-
13 lature. If there exists a balance in the risk adjustment pool, the
14 final report shall provide a timeline by which repayment will be
15 completed.

16 17. If at any point while this section shall be in effect the federal
17 government by law or regulation provides sick leave and/or employee
18 benefits for employees related to COVID-19, then the provisions of this
19 section, including, but not limited to, paid sick leave, paid family
20 leave, and benefits due to disability, shall not be available to any
21 employee otherwise subject to the provisions of this section; provided,
22 however, that if the provisions of this section would have provided sick
23 leave and/or employee benefits in excess of the benefits provided by the
24 federal government by law or regulation, then such employee shall be
25 able to claim such additional sick leave and/or employee benefits pursu-
26 ant to the provisions of this section in an amount that shall be the
27 difference between the benefits available under this section and the
28 benefits available to such employee, if any, as provided by such federal
29 law or regulation.

30 § 2. This act shall take effect immediately.

Memo Text Not Found for Bill S8091

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S8091

SPONSOR: RAMOS

TITLE OF BILL:

An act providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19

PURPOSE:

To provide sick leave benefits, paid family leave, and benefits due to disability for employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.

SUMMARY OF PROVISIONS:

The bill provides protections for employees of private and public employers who are subject to a mandatory or precautionary order of quarantine related to COVID-19. For employees working for small employers (1-10 employees), employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive unpaid sick days and the ability immediately to qualify for paid family leave and temporary disability benefits, plus full job protection. For employees working for medium sized employers (11-99 employees) and small employers (1-10 employees) with a net income of \$1 million a year, employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive five paid sick days and the ability immediately thereafter to qualify for paid family leave and temporary disability benefits, plus full job protection. For employees working for large employers (100 or more employees) and public employees, employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 will receive paid sick days for the entirety of the quarantine (up to 14 days), plus full job protection. All employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 are given full job protection during time of absence. Employees will qualify for paid family leave to care for a minor dependent child who is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The Department of Financial Services will implement a risk adjustment pool to assist in the stabilization of claims related to paid family leave and temporary disability benefits.

Section 2 puts the law into effect immediately.

EXISTING LAW:

There are currently no provisions for sick leave for private employees in the law. Current law on paid family leave, temporary disability benefits, and unemployment insurance do not cover mandatory or precautionary orders of quarantine or isolation due to COVID-19.

JUSTIFICATION:

Paid sick leave is one of the most effective tools at protecting public health and stopping the spread of illnesses. It alleviates the financial pressure for people that feel they must go to work sick to keep their job, curbing the spread of their illness to coworkers and commuters. In light of the unprecedented nature of the COVID-19 outbreak and its impact on New York workers, this bill guarantees that New York employees have job-protected paid sick leave and access other benefits during a mandatory or precautionary order of quarantine or isolation due to COVID-19. This will provide critical relief to workers and curb the spread of COVID-19.

LEGISLATIVE HISTORY:

None.

BUDGET IMPLICATIONS:

None.

EFFECTIVE DATE:

The bill takes effect immediately.