New York State and Federal COVID-19 Sick Leave Laws
Overview

- New York State COVID-19 Paid Sick Leave Law
- Federal Families First Coronavirus Response Act
- Interplay between the federal and state laws
New York State COVID-19
Paid Sick Leave Law
Overview

• Effective March 18, 2020.
• Requires employers to provide sick leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation.
How is Quarantine Defined?

• A mandatory or precautionary order of quarantine or isolation is one issued by the State of New York, the Department of Health, local Board of Health, or any government entity duly authorized to issue such order due to COVID-19.

• How much sick leave are employees entitled to receive?
  – Amount of sick leave and whether paid or unpaid depends on number of employees.
Amount of Sick Leave

• Employers with 10 or fewer employees and less than 1 million dollars of net income in the previous tax year must provide unpaid sick leave until the termination of the employee’s mandatory or precautionary order of quarantine or isolation.
  – While unpaid, employee is eligible for Paid Family Leave and disability benefits.
Amount of Sick Leave

• Employers with 10 or fewer employees with a net income of greater than 1 million dollars in the previous tax year must provide at least 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 5 days of paid leave, the employee is eligible for Paid Family Leave and disability benefits.
Amount of Sick Leave

• Employers with 11-99 employees must provide least 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 5 days of paid leave, the employee is eligible for Paid Family Leave and disability benefits.
Amount of Sick Leave

• Employees with **100 or more** employees must provide at least **14 days of paid sick leave** during the mandatory or precautionary order of quarantine or isolation.

• No indication in the law that employees are eligible for Paid Family Leave or disability benefits after the 14 days of paid sick leave.
Job Protection

• Employees taking leave must be restored to the position held prior to leave with same pay and other terms and conditions.
• Employer is prohibited from discharging, threatening, penalizing, discriminating or retaliating against the employee for taking leave.
Disability Benefits

• Law expands definition of “disability” to cover employees who are unable to perform their regular duties or the duties of any other employment the employer may offer because of a mandatory or precautionary quarantine or isolation due to COVID-19 and employee has exhausted all paid sick leave accruals under the new paid sick leave law.

• Eligibility for disability benefits:
  – Available on the 1st day of disability.
  – No 7 day waiting period.
Order for Disability and Paid Family Leave

• A mandatory or precautionary order of quarantine or isolation issued by the State, the Department of Health, a local Board of Health, or any government entity duly authorized to issue such order due to COVID-19 is sufficient proof of a disability or for purposes of taking Paid Family Leave.
Paid Family Leave Benefits

• “Family leave” expanded to include
  – Any leave taken by the employee subject to a mandatory or precautionary order of quarantine or isolation; OR
  – To provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation.
Eligibility for Paid Family Leave to Care for Children

• Employee must be eligible under Paid Family Leave
  – Full-time employee that has been so employed at least 26 weeks (if regularly working 20 or more hours per week).
  – Part-time employee that has worked at least 175 days (if regularly working less than 20 hours per week).
Eligibility for Paid Family Leave to Care for Children

• In order to qualify, employees must produce as required documentation 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 government entity duly authorized to issue such order due to COVID-19.
Once Eligibility is Met

• Employees must collect and submit:
  – Request for COVID-19 Quarantine PFL - Child (Forms PFL-1 & CCOVID19)
    • http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/ccovid19.pdf
  – Employees must also complete the PFL-1 form
Once Eligibility is Met

• Employees must submit paperwork to employers, who then must complete and return within 3 business days.
Disability and Paid Family Leave Benefits

• Benefits for both disability and Paid Family Leave may be paid concurrently on the 1st full day of unpaid mandatory or precautionary order of quarantine or isolation.

• Cap on total benefits:
  – $840.70 per week (Paid Family Leave)
  – $2,043.92 per week (Disability)
Pay Options Under NYS Covid-19 Sick Leave

State Guidance Provides:

- If you work for a public employer or an employer with more than 100 employees as of January 1, 2020, you are entitled to at least 14 days of paid sick leave at your regular rate of pay.
Pay Options Under NYS Covid-19 Sick Leave

State Guidance provides:

• If you work for an employer with 11 or more employees or for an employer with fewer than 10 employees as of January 1, 2020, whose income was greater than $1 million dollars in 2019 you are entitled to at least 5 sick days at your regular rate of pay. After those days are used, you may be eligible to receive your weekly wages through a combination of Paid Family Leave and disability benefits up to a maximum of $2,884.62 per week.
Pay Options Under NYS Covid-19 Sick Leave

State Guidance provides:

• If you work for an employer with fewer than 10 employees as of January 1, 2020, whose income was $1 million dollars or less in 2019, then you may be eligible to receive your weekly wages through a combination of Paid Family Leave and disability benefits up to a maximum of $2,884.62 per week.
Public Employers

• Required to provide at least 14 days of paid sick leave during the mandatory or precautionary order of quarantine or isolation.

• Employee is entitled to their regular rate of pay for their regular hours worked during their absence.

• Rights under a CBA are not diminished.
Limitations on Paid Sick Leave

• 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.
Limitations on Paid Sick Leave

• Employee is not entitled to paid sick leave where the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the US after traveling to a country with 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.

• Employee can utilize accruals or unpaid sick leave.
Families First Coronavirus Response Act
Overview

- Signed by President Trump on March 18th and becomes effective April 1, 2020.
- 2nd part of a 3-part response effort to COVID-19.
- The Act included the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Law.
Emergency Family and Medical Leave Expansion Act
Overview

• Employees may take 12-weeks of job-protected leave to care for a son or daughter under 18 years of age where the employee is unable to work (or telework) as a result of a school or place of care closure or because the child care provider is unavailable due to an emergency with respect to COVID–19 declared by a Federal, State, or local authority.
Overview

• This is the only qualifying reason an employee can take leave under expanded FMLA – all other provisions of FMLA remain the same.

• Effective April 1, 2020 through December 31, 2020.
Covered Employers

• Applies to employers with 500 or less employees.
• If you have more than 500 employees, the Act does not apply.
• Change from regular provisions of FMLA that apply to employers with 50 or more employees.
Who is an Employee?

- 500 is counted at the time the leave is taken.
- Full- and part-time employees are counted.
- Employees on leave and temporary employees are counted.
- Independent contractors do not count.
Eligible Employees

• Must have worked for the employer for 30 calendar days.
• Change from regular provisions of FMLA that require employee to have worked previous 12 months and for 1,250 hours.
Paid Leave

• First 10 days of leave are unpaid.*
  – Employee may use accruals during this time.
• Remaining portion of 12 weeks is paid.
• Employee must provide notice of leave to the extent practicable.

*Some employees may be eligible for emergency paid sick leave.
Calculation of Pay

• Pay is calculated based on an amount:
  – That is not less than 2/3 of employee’s regular rate of pay **AND**
  – The number of hours the employee would otherwise be normally scheduled to work.

• Cap on paid leave:
  – $200 per day and $10,000 in the aggregate for the ten week period.
Calculation of Pay

• Overtime must be included only if normally scheduled.
• No premium pay for overtime.
Part-time Employee Calculation of Pay

• For part-time employees with varying schedules → use a number equal to the average number of hours the employee was scheduled to work per day over the past 6 months prior to leave.
  – This should include hours taken for leave.
Part-time Employee Calculation of Pay

• If employee did not work the previous 6-months, use the reasonable expectation at the time of hire of the average number of hours per day that employee would normally be scheduled to work.
Special Rules and Exemptions

• Federal DOL may exclude certain health care providers and emergency responders.

• Federal DOL may exempt small businesses with less than 50 employees when it would jeopardize the viability of the business as a going concern.

• Employers of health care providers and emergency responders may opt-out.
Special Rules and Exemptions

• Criteria still being developed on small business exemption election.
• Employers should not send any materials to the Department of Labor when seeking an exemption at this point.
Job-Protected Leave

• Employers with 25 or more employees must return employees to same or equivalent position.
• Employers with less than 25 employees are exempt if satisfy following conditions:
  1. Position held by employee when leave commenced does not exist due to economic conditions that affect employment and are caused by a public health emergency.
Job-Protected Leave

2. Employer makes reasonable efforts to restore the employee to an equivalent position.

3. If the reasonable efforts fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available for 1-year period beginning on the earlier of the date on which the qualifying need related to a public health emergency concludes, or the date that is 12 weeks after the date on which the employee’s leave commences.
Emergency Paid Sick Leave Act
Overview

• Effective April 1, 2020 through December 31, 2020.

• Applies to Employers with 500 or less employees (includes full-time, part-time, and temporary).

• Employers must provide paid sick time to employees to the extent the employee is unable to work (or telework) due to one of the following reasons.
Reasons for Paid Sick Leave

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
Reasons for Paid Sick Leave

4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.

6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
How much Paid Sick Leave?

- **Full-time employees** = 80 Hours.
- **Part-time employees** = the number of hours equal to the number of hours that the part-time employee works on average over a 2-week period.
Calculating Paid Sick Time

• Employees using paid sick leave for their own use (reasons 1-3):
  – Based on employee’s regular rate of pay or federal or state minimum wage (whichever is greater) AND
  – Number of hours the employee is normally scheduled to work.

• For employees using paid time to care for others or due to a substantially similar condition (reasons 4-6), paid sick time will be 2/3 their regular rate of pay or federal or state minimum wage (whichever is greater).
Calculating Paid Sick Time

• Part-time employees/varying schedules:
  – Use a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes paid sick leave, including hours for which the employee took leave of any type.
  – If employee did not work prior 6 months, use the reasonable expectation at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
Cap on Sick Leave Pay

• Employees using paid sick leave for their own health (reasons 1-3):
  – 100% of pay.
  – Pay must not exceed $511 per day and $5,110 in the aggregate.
Cap on Sick Leave Pay

• Employees using paid sick leave to care for others of due to a substantially similar condition (reasons 4-6):
  – 2/3 of pay.
  – Pay must not exceed $200 per day and $2,000 in the aggregate.
Cap on Sick Leave Pay

• Overtime is included.
  – However an employee scheduled to work 50 hours per week would be entitled to 50 hours pay in week one, but only 30 hours in week two for 80 hours total.
Exclusions and Exemptions

• Federal DOL may exclude certain health care providers and emergency responders.

• Federal DOL may exempt small businesses with less than 50 employees when it would jeopardize the viability of the business as a going concern.

• Employers of health care providers and emergency responders may opt-out.
Miscellaneous

• Employees may use leave immediately, regardless of length of employment.
• Paid sick time cannot be carried over.
Employer Prohibitions

• Cannot require employee to find coverage while out on leave.
• Cannot require employee to use other accruals before using paid sick time.
• May not discipline, discharge, or otherwise discriminate or retaliate against an employee for taking leave or filing a complaint or participating in an investigation alleging a violation of this law.
Employer Requirements

• Must post notice from Federal Department of Labor (www.dol.gov)
• Must be posted no later than April 1, 2020.
EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

- PAID LEAVE ENTITLEMENTS

Generally, employees covered under the Act must provide employees:

- Up to two weeks (80 hours) of paid sick leave or expanded family and medical leave per reason and in each calendar year;

- 100% of the employee’s wages for up to 2 weeks of paid sick leave or expanded family and medical leave;

- 2/3 of the employee’s regular rate of pay, as determined by the employer’s usual business practices, for up to 10 additional weeks of paid sick leave or expanded family and medical leave for reasons 4 or 5 below.

- ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 60 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reasons 4 below.

- QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. Is subject to a federal, state, or local quarantine or isolation order related to COVID-19;

2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

3. Is experiencing COVID-19 symptoms and is seeking medical care;

4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);

5. Is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons;

6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services.

- ENFORCEMENT

The U.S. Department of Labor’s Wage and Hour Division (WHD) has the authority to investigate and ensure compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employees who lawfully take and ask leave or expanded family and medical leave under the FFCRA. A violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

For additional information or to file a complaint:

1-866-687-9225
TTY: 1-877-888-8478
whd.gov/employers/whd
Tax Credits

• To offset the cost to employers required to provide paid leave under Emergency FMLA and Emergency Paid Sick Leave Act can utilize tax credits.

• Tax credits will equal 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.
Tax Credits

• For Emergency Paid Sick Leave → tax credit capped at $511 per day or $200 per day where the leave is to care for a family member or child.

• For Emergency FMLA → tax credit capped at $200 per day for each individual up to $10,000 in the aggregate.
Interplay between Federal and New York COVID-19 Laws
NYS COVID-19 law is clear that Federal law applies. However, if there are provisions that are more expansive in New York, those discrete provisions will apply.
• If you have more than 100 employees you must provide 14 days of sick, not just two weeks.

• If you have more than 500 employees, you are not covered by the Federal law, but you are required to provide sick leave for quarantine for yourself and/or your minor child being placed in precautionary or mandatory quarantine.
• Federal law is more expansive in its application of Emergency Sick Leave.
• Including caring for an "individual" that is quarantined. There is no definition as to the relationship to "individual."
• Both laws are clear that the ability to work remotely does not trigger these provisions.
• The Federal law counts the number of employees at the time that an employee seeks leave.

• New York State determines the number of employees based upon the count as of January 1, 2020.
Questions?
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