

New York Enacts COVID-19 Sick Leave Act

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On March 18, 2020, Governor Cuomo signed a bill to provide immediate assistance to New Yorkers impacted by COVID-19. The act provides paid and unpaid leave to employees “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.” New York has also published guidance and forms further implementing the provisions of the act.

This includes a [Notice](#) entitled “COVID-19 Paid Sick Leave” for employers to provide to any employee who becomes subject to a mandatory or precautionary order of quarantine or isolation.

Under the act, the amount and type of leave employers must provide employees varies by employer size and income:

- Employers with 10 or fewer employees as of January 1, 2020, with net income of \$1 million or less in the previous tax year must provide employees with unpaid leave through the period of mandatory or precautionary quarantine or isolation;
- Employers with 10 or fewer employees as of January 1, 2020, with net income of greater than \$1 million in the previous tax year must provide employees with 5 days of paid leave and then unpaid leave through the period of mandatory or precautionary quarantine or isolation;
- Employers with between 11 and 99 employees as of January 1, 2020, must provide employees with 5 days of paid sick leave and then unpaid leave through the period of mandatory or precautionary quarantine or isolation; and
- Employers with 100 or more employees as of January 1, 2020, must provide employees with 14 days of paid sick leave during any mandatory or precautionary quarantine or isolation.

For employees of those small and midsize employers who receive unpaid leave, those employees are eligible to receive paid family leave and disability benefits for the period of unpaid leave due to quarantine or isolation. For employees of larger employers, there is no such requirement for unpaid leave or benefits. While any paid sick leave would be funded by an employer, paid family leave and disability benefits would be covered by an employer’s paid family leave and disability benefits insurance carrier. Instructions and forms for an employee to apply for paid family leave and/or disability benefits are available at <https://paidfamilyleave.ny.gov/COVID19>.

The act also provides that in the event the federal government were to pass legislation providing similar benefits, such as the emergency paid sick leave provided under the just-passed Families First Coronavirus Act of 2020, an employee would only be eligible to collect benefits under the act in excess of those provided under federal law.

Leave under the act also does not affect other accrued sick leave, which includes any sick leave under New York City law. And the act carves out employees who can work remotely who are subject to quarantine or isolation, provided they are asymptomatic, not diagnosed, and physically able to work. The act also excepts from coverage those employees who traveled to a country that the Centers for Disease Control and Prevention has issued a level two or three travel health notice,

provided that travel was not at the direction of the employer and the employee had notice of the travel notice prior to the travel.

Employees are guaranteed job protection for the duration of the leave prompted by the quarantine or isolation order. Employers must restore employees to their same position and terms of employment held prior to leave. And employers are prohibited from retaliating against an employee, which includes terminating or otherwise penalizing an employee, because the employee has taken paid or unpaid leave under this act. So, employers must carefully consider the applicability of the act when determining whether to lay off employees or otherwise change terms and conditions of employment.

The act also creates permanent statewide paid sick leave that is separate and apart from COVID-19 circumstances, requiring employers to provide paid sick leave for the enumerated purposes beginning on January 1, 2021.