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SPECIAL ALERT FOR BUSINESSES ON

The Coronavirus

What You Need To Know About The New COVID-19 Paid Leave Laws

The past few weeks have brought action by both the federal and New York state governments to assist employers and employees suffering from income loss related to the COVID-19 pandemic. The following is a summary of new legislation on both the federal level and New York state level.

New York State Paid Sick Leave Law

New York State acted swiftly - on March 18, 2020 - to immediately implement paid sick leave for persons affected by COVID-19. Eligibility requires a mandatory or precautionary order of quarantine or isolation issued by a government Department of Health—these are actual written documents given to those under such an order. The law provides job protection for persons under such an order even once the paid portion of the leave is completed, until the order is lifted.

The amount of paid sick leave required is based on the employer's size and annual net income; the amount to be paid to employees, full or part-time, is calculated based on their regular rate of pay (see below).

Contact us if you have questions about New York's Paid Sick Leave law.

Other important information about New York's Paid Sick Leave law:

- employees who are able to work from home during the period of quarantine are NOT eligible
- employees self-quarantining or not reporting to work because of child care issues are NOT eligible
- the employer **cannot** require the affected employee to use pre-existing paid accrual time
- no retaliation for use of this leave
- not eligible if the employee traveled voluntarily on a non-business trip to a CDC-rated level 2 or 3 area if there was notice of the health travel notice

- if the employee is eligible, this leave will run concurrent with any qualified federal leave described below, once the federal laws go into effect on April 1st.
- employees cannot receive New York Paid Sick Leave while also collecting Paid Family Leave (NY law) or disability
- payment to employee is made as part of the regular payroll period, at employee's regular rate of pay (which is base rate plus commission and non—discretionary bonuses). For hourly, part-time, those paid on commission or others not paid a fixed wage, the regular rate is calculated using the amount that would be paid over the representative period of time.
- payment is based on *calendar days*, that is, the number of paid days the employee would have otherwise worked after issuance of the order of quarantine or isolation, within the 5 or 14 calendar day period, as required in the chart below:

Employer Size	Employer Annual Net Income 2019	Maximum Number of Required Paid Sick Leave Days
1 to 10	< \$1 Million	0
1 to 10	> \$1 Million	5
11 to 99		5
100 or More		14
Public Employers		14

Federal Families First Coronavirus Response Act

There are two parts to the relief provided by the new federal law, which goes into effect on **APRIL 1, 2020** and runs through December 31, 2020. The “Emergency Family and Medical Leave Expansion Act” provisions apply **only** in situations related to school closings, day care or child care provide closings because of COVID-19. The “Paid Sick Leave Act” provides qualified employees with up to 80 hours of paid sick leave, with certain restrictions, for specific COVID-19 related situations.

Both Acts apply to employers having fewer than 500 employees. If employers have closed their business or otherwise laid off or furloughed employees before April 1st, they do not need to comply with either section of these Acts. These provisions apply only to actively, scheduled employees. The Acts provide new relief as of April 1st, and employers may not use “credits” for paid leave provided prior to April 1st to reduce the entitlements under the Acts.

There are certain possible exemptions for businesses with fewer than 50 employees. Corporations are single employers under the FMLA and all employees of the corporation, at all locations, are counted for coverage purposes. Separate entities or corporations may be parts of a single employer for FMLA purposes.

Contact us if your business includes separate entities or corporations, or if your business has fewer than 50 employees, for advice on whether these new laws apply to you.

“Emergency Family and Medical Leave Expansion Act”

- Must be employed at least 30 calendar days prior to the leave request, to be eligible.
- First 10 days of leave time is UNPAID, unless the employee qualifies to use the Paid Sick Leave Act time de-

scribed below. Alternatively, the employee may choose—but cannot be required—to use already accrued paid time off (vacation, sick, PTO, etc.)

- Available only if the employee is caring for his or her child under the age of 18 whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.
- Employee must be unable to telework while caring for their child. Note that employers may choose to agree to a reduced schedule of telework for employees who are able to perform partial days of telework while caring for a child whose school or place of care is closed. In those cases, the non-teleworked hours would fall under the Emergency FMLA Expansion Act time as intermittent leave.
- Employee must provide appropriate documentation in support of such leave; for example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child care provider. This documentation will assist employers in claiming a tax credit under the FFCRA for the expanded family and medical leave.
- If the school or child care provider continues to be closed after the initial 10 day period, the employee is entitled to be paid 2/3 of their regular rate of pay for the number of hours they would normally be scheduled to work, up to \$200 per day or \$10,000 in the aggregate.
- **TOTAL** FMLA eligibility in a 12 month period remains 12 weeks, meaning time already taken off under FMLA for other qualified reasons (example sickness or surgery), will count against the total 12 weeks of eligibility in a 12 month period as previously defined by the employer.
- A part-time employee is entitled to leave for his or her average number of work hours in a two-week period. If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours it was agreed the employee would work upon hiring. If there is no such agreement, calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment. For employees with variable schedules, employers should take the average rate of what the employee would have worked over the 2 week period; if the employee works variable hours, then the employer should take an average over a 6 month period of time as to what the employee worked on average.

“Paid Sick Leave Act”

- **NO** requirement to already be employed for 30 days
- **NO** 10 day waiting period
- **NO** carryover into 2021 or requirement to be paid out upon termination (voluntary or involuntary)
- **NOT** eligible if able to telework
- **CAN** be used on intermittent basis if teleworking, upon agreement of employer and employee
- **CAN** be used to cover the 10 day unpaid waiting period under the Emergency Family and Medical Leave Expansion Act.

- Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or federal minimum wage, paid at:
 - 100%, up to \$511 daily and \$5,110 aggregate total, if the employee:
 - 1) is subject to a Federal, State, or local quarantine or isolation order* related to COVID-19; OR
 - 2) has been advised by a health care provider* to self-quarantine related to COVID-19; OR
 - 3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis*.
 - 2/3, up to \$200 daily and \$2,000 aggregate total, if the employee:
 - 4) is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)*; OR
 - 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; OR
 - 6) is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

***Note: Employee must provide appropriate documentation in support of the reason for the leave, including: the employee's name, qualifying reason for requesting leave, statement that the employee is unable to work, including telework, for that reason, and the date(s) for which leave is requested. Documentation of the reason for the leave will also be necessary, such as the source of any quarantine or isolation order, or the name of the health care provider who has advised self-quarantine. For example, this documentation may include a copy of the Federal, State or local quarantine or isolation order related to COVID-19 applicable to the employee or written documentation by a health care provider advising the employee to self-quarantine due to concerns related to COVID-19.**

- For qualifying reason #5 above, the employee across BOTH Acts, is eligible to receive a total of up to \$200 daily and \$12,000 total.
- Employees receiving 2/3 of their normal earnings from paid sick leave or expanded family and medical leave, may use preexisting employer-provided paid leave to get the additional 1/3 of their normal earnings so that they receive their full normal earnings for each hour, BUT ONLY IF THE EMPLOYER PERMITS IT. Employers will not receive tax credit for such supplemental amounts.
- ***If the place of employment is still open and the employee is not teleworking***, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments, not intermittently, if the leave is being taken because of any reason OTHER THAN #5 above. Even for qualifying reason #5, the employer must agree to intermittent use. For qualifying reasons OTHER THAN #5 ABOVE, unless the employee is teleworking, once they begin taking paid sick leave for one or more of the other qualifying reasons, they must continue to take paid sick leave each day until they either (1) use the full amount of paid sick leave or (2) no longer have a qualifying reason for taking paid sick leave.
- ***If the place of employment is still open and the employee is not teleworking***, they may use Paid Sick Leave intermittently for reason #5, but only if the employer agrees (example, on only 3 days of the week if child care is available the other 2 days).

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