

# New York Adopts Sick Leave and Job Protections for Employees under Quarantine and Isolation Orders Due to COVID-19

March 20, 2020

On March 18, 2020, the New York legislature passed and Governor Andrew M. Cuomo signed into law an act requiring New York employers to provide sick leave and job protection to employees subjected to orders of quarantine or isolation as a result of COVID-19. **The law goes into effect immediately.**

## COVID-19 SICK LEAVE REQUIREMENTS AND JOB PROTECTIONS

- **Protected Employees** are those subjected to mandatory or precautionary quarantine or isolation orders issued by the State of New York, the department of health, local boards of health or any authorized governmental entity due to COVID-19.
- **Sick Leave Requirements.** Private employers must provide *additional* sick leave benefits —(i.e., provided without loss of the employee’s existing accrued sick leave) —to these protected employees as follows:

Number of employees (as of January 1, 2020)	Paid sick leave	Unpaid sick leave	Paid family leave and disability benefits
100 or more	14 days	Not specified	Not specified
11 to 99	5 days	Remaining period of quarantine or isolation order	Remaining period of quarantine or isolation order
10 or fewer (with net income greater than \$1 million in prior tax year)	5 days	Remaining period of quarantine or isolation order	Remaining period of quarantine or isolation order
10 or fewer (with net income of \$1 million or less in prior tax year)	None	Duration of quarantine or isolation order	Duration of quarantine or isolation order

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- **Exceptions:** An employee who is subject to a quarantine or isolation order will be ineligible for the above benefits in the following circumstances:
    - **Asymptomatic or undiagnosed remote workers.** An employee is ineligible if (1) the employee is asymptomatic or has not yet been diagnosed with any medical condition; and (2) the employee is physically able to work during the quarantine or isolation order through remote access or similar means; or
    - **Recent nonbusiness travel to countries with CDC level 2 or 3 designations after notice given by employer.** An employee is ineligible for paid benefits if (1) the employee is subject to a quarantine or isolation order because the employee traveled to a country with a level 2 or level 3 designation on the CDC's travel health notice; (2) the travel was not a part of employment or at the direction of the employer; and (3) notice was provided to the employee of the CDC travel health notice and this exception to the additional job protections and sick leave requirements. However, employees who fall under this exception will be eligible to use accrued leave provided by the employer and/or unpaid sick leave for the duration of the employee's quarantine or isolation order.
  - **Job Protections.**
    - **Job Restoration.** Upon return to work, an employee must be restored to the same position of employment held prior to the leave with the same pay and other terms and conditions of employment.
    - **Protection from Discrimination and Retaliation.** Employers may not discharge, threaten, penalize or otherwise discriminate or retaliate against any employee as a result of leave taken pursuant to the law.
  - **New York Paid Family Leave and Disability Benefit.** After paid leave is exhausted, employees may use paid family leave (PFL) or disability benefits under New York law for the period of quarantine or isolation. These benefits may be payable concurrently.
    - **NY PFL.** Employees may use paid family leave as a result of a mandatory or precautionary order of quarantine or isolation due to COVID-19 or to provide care for a minor dependent child of the employee who is subject to such an order. Paid family leave is capped at \$840.70 per week.
    - **NY Disability Benefits.** An employee will be considered disabled under the law if the employee is unable to perform the regular duties of employment or other employment offered by the employer as a result of a mandatory or precautionary

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order of quarantine or isolation due to COVID-19. New York disability benefits under these conditions are capped at \$2,043.92 per week.

- **Interaction with Federal Law.** These provisions are available to employees only to the extent that they exceed similar protections and provisions enacted by federal law or regulations in response to COVID-19, including under the recently enacted federal Emergency Paid Sick Leave and Medical Leave Expansion Acts. For more information about these laws, see our client update: <https://www.debevoise.com/-/media/files/insights/publications/2020/03/20200319-coronavirus-response-act-signed-into-law.pdf>.

#### **ACTION ITEMS FOR NEW YORK EMPLOYERS**

Covered employers should immediately comply with the law:

- Assess how the newly mandated requirements interplay with current sick leave policies and federal requirements;
- Prepare to communicate with employees and respond to employee questions about new benefits that may be available to them under the law; and
- Monitor for additional regulatory guidance from the New York commissioner of labor.

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Please do not hesitate to contact us with any questions.

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