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New York State Issues Guidance on COVID-19 Quarantine Leave Law

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On March 25, 2020, New York State published Frequently Asked Questions and other guidance regarding the state's recently enacted Covid-19 Paid Sick Leave Law and expansions to New York's Paid Family Leave Law (PFL) and Disability Benefit Law. This bill was signed into law on March 18 and became effective immediately as part of a statewide Coronavirus response.

The law, which we previously addressed in a prior post, requires New York employers to provide job-protected sick leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, a state or local health department, or any other governmental entity due to COVID-19. The law also provides certain qualifying employees with salary continuation during otherwise unpaid leave periods by expanding coverage under the PFL and Disability Benefit Law.

The following are some key highlights from New York's guidance:

Available Benefits

Under the law, employees subject to a qualifying quarantine or isolation order who are not able to telework during the period of the order are eligible to take job-protected leave and will receive compensation through a combination of sick leave and, in some cases, disability and PFL benefits according to the size of their employer:

- Employers with 10 or fewer employees and a net income of less than $1 million in the previous tax year must provide eligible employees with unpaid, job-protected sick leave through the termination date of a qualifying order. Employees may also be eligible for a combination of PFL benefits and statutory disability during the quarantine period up to a maximum of $2,884.62 per week.
- Employers with 10 or fewer employees as of January 1, 2020 with revenue of more than $1 million in 2019 and employers with between 11 and 99 employees as of January 1, 2020 must provide eligible employees with paid sick leave during a 5 day period. After paid sick leave is exhausted, employees are eligible to receive benefits through a combination of PFL and statutory disability up to a maximum of

$2,884.62 per week.

- Employers with 100 or more employees as of January 1, 2020 must provide eligible employees with paid sick leave for a 14 day period paid at the employee's regular rate of pay during a qualifying quarantine or isolation order period. All covered public employers, regardless of size, also must provide paid sick leave for 14 days during a qualifying order period.

In addition, all employees who are otherwise eligible for PFL in the normal course (regardless of employer size) may also apply for PFL benefits if they require leave to provide care for a minor dependent child of the employee who is subject to a qualifying quarantine or isolation order. Such PFL benefits would be available at the same rate as PFL taken for other covered reasons (in 2020, the PFL benefit is 60% of an employee's average weekly wage, up to a maximum weekly benefit of $840.70).

The guidance clarifies that **the number of paid sick days that must be provided under the law – 5 or 14 depending on the size of the employer – is based on calendar days**, such that employees should be paid the amount that they would have otherwise received during the covered calendar days at their regular rate of pay for the applicable leave period. Specifically, the amount of pay is calculated based on when the employee was scheduled or would have been scheduled to work had the employee been able to continue to work during the leave period. Salaried and fixed-schedule employees should continue to receive their regular pay for the applicable period. Hourly, part-time, commissioned salespeople and other employees who are not paid a fixed wage should be paid an average daily pay rate based on a representative period of time.

Pursuant to Section 191 of the New York Labor Law, employers should make paid sick leave payments during the pay period corresponding to the workweek in which the leave was taken. In addition, the guidance makes clear that there is no waiting period for benefits claimed pursuant to the COVID-19 quarantine leave law.

Notably, employees may take leave under the new law if they remain under a qualifying mandatory or precautionary order of quarantine or isolation that was issued prior to enactment of the law. And employers are required to provide leave under the law separate from any accrued sick leave or other paid time off.

Employee Eligibility

The guidance makes clear that employees who decide independently to quarantine are not eligible for sick leave or other statutory benefits under the new law. An order, either mandatory or precautionary, issued by the State of New York, New York State Department of Health, local Board of Health or other government entity authorized to issue such order is a prerequisite for the leave benefits set forth in the law.

Similarly, employees with children whose school is closed due to an order issued by a covered government entity may be eligible for PFL benefits if they require leave to care for their children. However, a school that is closed for preventative social distancing and is not otherwise subject to a covered order will not trigger the new law's leave entitlements.

Importantly, the guidance reiterates that employees who are not showing symptoms related to COVID-19 and are physically able to work through remote access or similar means are not eligible for paid sick leave under the law. Similarly, employees who voluntarily traveled to a country with a level 2 or 3 health notice from the Centers for Disease Control and who were provided notice of the travel health notice and knew about this restriction in the new law are not eligible for leave benefits.

Notably, the guidance is also clear that employees of employers that temporarily close or go out of business due to COVID-19 are not eligible for benefits under the new law but may be eligible for unemployment insurance benefits.

How to Apply

Employees do not have to apply for quarantine-related sick leave under the law – employers must provide such leave in qualifying circumstances upon request. However, employees of employers with fewer than 100 employees that exhaust quarantine-related sick leave or other accrued leave provided by their employer must apply for PFL and disability benefits to cover the remainder of their quarantine period. The application process is as follows:

- The employee must complete the employee sections of the "Request for COVID-19 Quarantine Leave for Yourself" form package, which includes the "Request for COVID-19 Quarantine DB/PFL-Self (Form SCOVID19) and "Request for Paid Family Leave (Form PFL-1)" forms, and mail the completed forms to the employer.
- The employer has three (3) business days to complete the employer sections on both forms and return them to the employee. If the employee does not receive the

completed forms, he/she can nevertheless submit the application to the employer's statutory disability and PFL insurance carrier.

- The employee must submit the completed form package, along with a copy of the mandatory or precautionary order, to the employer's statutory disability and PFL insurance carrier no later than 30 days from the first day of leave. The insurance carrier must then pay or deny the claim within 18 calendar days of receiving the employee's completed request.

Employees unable to work because a minor child is subject to a quarantine order will go through the same process, but must complete the "Request for COVID-19 Quarantine Leave for Child" form package, containing the "Request for COVID-19 Quarantine PFL – Child (Form CCOVID19)" and "Request for Paid Family Leave (Form PFL-1)."

If an employee does not receive a reply from the insurance carrier within 18 days or receives a denial of PFL benefits, he/she may file a request for arbitration with alternative dispute resolution firm NAM (National Arbitration and Mediation).

Complaints

Employees may file a complaint with the New York Department of Labor if they are:

- not provided with the required number of sick days for COVID-19 quarantine leave;
- not properly paid for sick days for COVID-19 quarantine leave (where applicable); or
- required to report to the worksite of a non-essential business or threatened if they do not work at a place other than their home, in accordance with NY Executive Order 202.8. Read more about EO 202.8 on our blog post here.

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As a reminder, the federal government has enacted the Family First Coronavirus Response Act which, among other things, requires employers with fewer than 500 employees provide certain full-time employees with up to 80 hours of emergency paid sick leave and part-time employees with a number of hours that would equal the hours that such employee works over a 2-week period. As set forth in the New York COVID-19 Quarantine Leave Law, employees in New York who are also covered by the federal law are eligible to receive the difference between what the federal legislation provides and what is available under the state law.

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