

NY State Announces Mandatory sick leave in response to COVID-19

On March 17, 2020, New York Gov. Andrew Cuomo announced an agreement with the New York State Legislature on a paid sick leave bill to provide “immediate assistance” for the employees in New York impacted by the COVID-19 crisis.

The bill “guarantees job protection and pay for New Yorkers quarantined” during the coronavirus outbreak. The legislation also adopts a “comprehensive” paid sick leave proposal, which was initially included in the Governor’s budget.

According to a press release from the Governor's office, “the paid sick leave measure we’ve agreed to today expands those protections to all new Yorkers—because no New Yorker should lose their job or income for following a critical public health order.” The release went on to say, “this is an extraordinary time in this nation’s history, and it will go down in the history books as one of those moments of true crisis and confusion. So, my message to New Yorkers is this: Be a little bit more sensitive, understand the stress, understand the fear, be a little bit more loving, a little bit more compassionate, a little bit more comforting, a little bit more cooperative. We are going to get through it, and we are going to get through it together.”

Benefits for Employees Under Quarantine or In Isolation

To address immediate needs, “each employee who is 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**” will be provided with job-protected leave as follows:

- **Employers with 10 or fewer employees and a net income less than \$1 million** must provide job protection for the duration of the quarantine order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine, including wage replacement for their salaries up to \$150,000.
- **Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million** must provide at least five (5) days of paid sick leave, job protection for the duration of the quarantine order, and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.
- **Employers with 100 or more employees** must provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.
- **All public employers (cities, towns, etc.), regardless of the number of employees,** must provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.

In addition, employees will be eligible for paid family leave and disability benefits immediately for any periods of quarantine or isolation in which they do not receive employer-provided paid leave. Therefore, the statute will:

1. expand the definition of “disability” for purposes of the workers’ compensation law to include “the inability to do work because of a mandatory or precautionary order of quarantine after the employee has exhausted all paid sick leave,” which will entitle eligible employees to a percentage of their average weekly wages, up to a maximum of \$2,043.92 in benefits per week; and
2. expand the definition of “family leave” for purposes of the workers’ compensation law to include:
 - a. leave taken to comply with a mandatory or precautionary order of quarantine; or
 - b. to provide care for the employee’s minor, dependent child who is subject to a mandatory or precautionary order of quarantine, which will entitle eligible employees a percentage of their average weekly wages up to a maximum weekly benefit of \$840.70.

Once the legislation is passed by the State Legislature and signed by the Governor, the above provisions will be effective immediately.

The Fine Print of the Legislation

The leave and benefits required under this legislation will be *available only to employees who have been officially quarantined or isolated by the government; they will not be available to employees who are voluntarily quarantined or isolated, who merely fear the virus could infect them, or who object to reporting to work for fear of exposure to the virus.* In addition, the law will not be applicable to employees who have been quarantined or isolated, but who are asymptomatic, not yet diagnosed with any medical condition, and are physically able to work remotely.

Also, the legislation does not provide any benefits for employees who are home with their children because schools are closed as a response to the COVID-19 Coronavirus pandemic.

The legislation expressly excludes any employee from receiving benefits under specific circumstances, including travel to a country with a level two or three travel health notice as set by the Centers for Disease Control (CDC), provided the travel was not taken at their employer’s direction or as part of the employee’s job. Any employee denied benefits as a result of non-work-related travel must be permitted to use their existing accrued but unused paid time off balances for this purpose.

Finally, the legislation is clear that *the paid time off required under this legislation are in addition to any sick leave or paid time off already provided by the employer, and employers are prohibited from charging an employee’s existing balance of accrued paid time off for this purpose.*