

# Current COVID-19 Quarantine Rules and their impact on COVID-19 Paid Leave

*January 12, 2022*

**Adam P. Mastroleo**



1

## Presenter



### **Adam P. Mastroleo**

Member, Labor & Employment

amastroleo@bsk.com

O: (315) 218-8139

C: (315) 278-0858

LinkedIn: <https://www.linkedin.com/in/adam-mastroleo-73174531/>



2

2

## Today's Agenda

- Current COVID-19 Isolation and Quarantine Rules
- NY COVID-19 Paid Leave Overview
- FAQs

3

3

## Current Quarantine/Isolation Requirements

- Federal Government
  - [CDC Recommendations](#), updated January 9, 2022
- New York State Department of Health
  - General Population
    - [Interim Updated Isolation & Quarantine Guidance](#), updated January 4, 2022
    - \*Anticipated update today: [www.ny.gov/isolation](http://www.ny.gov/isolation) and [www.ny.gov/quarantine](http://www.ny.gov/quarantine)
  - Healthcare Workers
    - [December 24, 2021 Guidance](#) and [January 4, 2022 Guidance](#)
    - Good summary of these requirements: [Bond Blog Post](#)

4

4

## Current Quarantine/Isolation Requirements

- Schools
  - [January 10, 2022 Guidance](#)
- Local Health Departments
  - [Onondaga County Quarantine/Isolation Guidance](#), updated January 11, 2022
  - [Onondaga County Quarantine/Isolation Flow Chart](#), updated January 11, 2022
  - [Erie County Quarantine/Isolation Guidance](#), current as of January 12, 2022
  - \*\*Control School Guidance

5



5

## Current Quarantine/Isolation Requirements

- Isolation
  - Following a positive test
  - Separation from those without COVID-19
  - Stay home and be separate from others
  - Specific “sick room” with separate bathroom if available
- Quarantine
  - Following an exposure to someone with COVID-19
  - Stay home and away from other people
  - Watch for symptoms

6



6

## Current Quarantine/Isolation Requirements

- General Population NYDOH Guidance (January 4, 2022)
  - IF POSITIVE:
    - Isolate for 5 days, where day 0 is the day of symptom onset or (if asymptomatic) the day of collection of the first positive specimen
    - If asymptomatic at the end of 5 days or if symptoms are resolving, isolation ends and the individual should wear a well-fitting mask while around others for an additional 5 days
      - \*Note that loss of taste and smell may persist for weeks or months and should not delay the end of isolation
    - Individuals who are moderately or severely immunocompromised should continue isolation for 10 full days
    - Individuals who are unable to wear a well-fitting mask should continue isolation for the full 10 days

7



7

## Current Quarantine/Isolation Requirements

- General Population NYDOH Guidance (January 4, 2022)
  - IF CLOSE CONTACT:
    - If not fully vaccinated or fully vaccinated and eligible for a booster but not yet boosted, quarantine for 5 days and wear a well-fitting mask for another 5 days
    - If fully vaccinated and boosted (with booster at least 2 weeks before exposure) OR not yet eligible for a booster, no quarantine is required but these individuals should wear a well-fitting mask for 10 days after exposure
    - If possible, test after day 5 with a PCR or antigen test
    - If symptoms appear, quarantine and seek testing

8



8

## Current Quarantine/Isolation Requirements

- General Population NYDOH Guidance (January 4, 2022)
  - “Note that work restrictions (if an individual works in healthcare or a congregate care setting as above) or school attendance requirements (depending on LHD guidance) for an individual **might be different** from isolation or quarantine requirements for that individual. Work restrictions pertain to only when the individual may return to work; isolation or quarantine requirements pertain to the individual’s other day-to-day activities in the community.”

9



9

## COVID-19 Paid Leave

- FFCRA Leave No Longer Available
- NY Paid COVID Leave (March 18, 2020)
  - Public and private employers
  - Employers must provide up to 14 days of paid leave, depending on size
  - Employees subject to a mandatory or precautionary order of isolation OR quarantine issued by the State of NY, Department of Health, or any governmental entity authorized to issue a quarantine order
  - Job protection
  - Cannot be charged against other leave, including sick leave
  - Amount the worker would have otherwise received during period (5 or 14 days)
  - No expiration

10



10

## COVID-19 Paid Leave

- NY Paid COVID Leave (Cont'd)
  - [January 20, 2021, Guidance](#)
    - NY Department of Labor
    - Leave available up to 3 times
    - Second and Third must be due to positive test
    - \*If employer mandates an employee who is not otherwise subject to a mandatory or precautionary order of quarantine to remain out of work due to exposure or potential exposure, employer must continue to pay regular rate of pay UNTIL the employer permits the employee to return to work or the employee becomes subject to a quarantine order. Employer must then pay for the full amount required during the order

11



11

## COVID-19 Paid Leave

- NY PFL
  - Available where employee must care for dependent under quarantine order
  - Other qualifying rules
  - [Request for COVID-19 Quarantine PFL](#)
- NY Disability

12



12

## Paid Leave FAQs

- Do I have to accept the self-attestation forms?
  - Onondaga County Self Attestation Forms
    - <http://www.ongov.net/health/documents/IsolationAffirmation.pdf>
    - <http://www.ongov.net/health/documents/QuarantineAffirmation.pdf>
  - Is this a quarantine order?
    - Neither Statute nor January 20, 2021 Guidance addresses this
    - Self-attestation says that it is “legal documentation” “as if it was an individual Order for Isolation issued by the Onondaga County Health Department Commissioner of Health.”
    - Statute says employee must be “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**”

13



13

## Paid Leave FAQs

- NY Department of Labor's January 20, 2021, Guidance states that second and third positive tests must be based on “documentation **from a licensed medical provider or testing facility** attesting that the employee has received a positive diagnostic test for COVID-19”
- Same guidance expands beyond the text of the statute
- Self-attestation entails concerns that the Department of Health Orders do not

14



14

## Paid Leave FAQs

- Do I have to accept at-home positive test for COVID pay?
  - Significant risk of falsification
  - Difficulty in obtaining PCR or rapid tests
  - Possible approaches:
    - Accept at-home test with nothing more
    - Accept at-home test with additional proof: Require a copy of the positive test AND proof that the individual has self-reported a positive test with the County Health Department to receive COVID pay OR picture with ID
    - Conditionally accept at-home test and provide COVID pay, but also require positive PCR or rapid test
    - Do not accept at-home test. Require employee to stay home and use PTO until positive test is received

15



15

## Paid Leave FAQs

- What do I do if an employee calls and says they were exposed to someone with COVID-19?
  - Ask questions about the nature of the contact
    - Is it "close contact" as defined by the state?
      - Share the same household OR were within 6 feet of a case for 15 minutes or more over a 24-hour period
  - Understand different requirements based on vaccination/booster status
  - If employee is required to quarantine based on guidance, is the leave paid?
    - May require employee to complete self-attestation form if available in your county
    - NY COVID Leave?
      - May pay COVID leave until test results (or not) based on January 20, 2021, Guidance document
      - May pay COVID leave based on attestation form for 5 days.

16



16



## Paid Leave FAQs

- If an employee who tests positive remains symptomatic after 5 days, do I have to continue to pay NY COVID leave?
  - Neither the Statute nor January 20, 2021, Guidance addresses
  - Current isolation rules only allow individual to break isolation after 5 calendar days if asymptomatic or if symptoms are resolving
  - Employee whose symptoms are not resolving must continue isolation
  - See January 20, 2021, Guidance for direction on individuals who continue to test positive

17



17

## Paid Leave FAQs

- Do I have to pay COVID leave if an employee is positive, but is able to work from home?
  - If the employee is able to work from home, and is healthy enough to work, they can work from home and no COVID pay is required
  - If the employee is able to work from home, but not healthy enough to work and is subject to an Isolation Order, they are entitled to COVID pay

18



18

## Paid Leave FAQs

- Do I have to pay COVID leave for an employee who tests positive, but who voluntarily chose not to be vaccinated?
  - No exception in the Statute or January 20, 2021, Guidance for unvaccinated employees

19



19

## Thank You

The information in this presentation is intended as general background information.  
It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express  
written authorization of Bond, Schoeneck & King PLLC.

20



20