

New Guidance on NY COVID-19 Sick Leave

On Jan. 20, 2021, the New York State Department of Labor issued [guidance regarding the use of COVID-19 sick leave](#). This guidance clarifies certain issues and provides new obligations for employers.

The NY COVID-19 Sick Leave Law was enacted on March 18, 2020, and entitles employees to paid or unpaid sick time (depending on employer size) when they are subject to an 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. All leave provided under this law is in addition to any leave required by the New York Paid Sick Leave Law, and is as follows for private employers:

Number of Employees (As of Jan. 1, 2020)	Amount of Sick Leave	Supplemental Benefits
0-10 employees; net income of \$1 million or less in the prior tax year	Unpaid leave for duration of the order	Combined COVID-19 Paid Family Leave (PFL) and Disability Leave Benefits (DBL) for the duration of the order
0-10 employees; net income of more than \$1 million in the prior tax year	5 days of paid sick leave	Combined PFL and DBL for the duration of the order
11-99 employees	5 days of paid sick leave	Combined PFL and DBL for the duration of the order
100+ employees	14 days of paid sick leave	

Public employers must also provide 14 days of sick leave at the employee's regular rate of pay when an employee is covered by the NY COVID-19 sick leave law.

The Jan. 20, 2021 guidance states that employees are entitled to COVID-19 sick leave under the following circumstances:

- If an employee tests positive for COVID-19 following a period of mandatory quarantine or isolation, the employee cannot report to work, is automatically deemed subject to a subsequent mandatory order of isolation from the Department of Health, and is entitled to paid sick leave under the NY COVID-19 sick leave law (even if the employee already received NY COVID-19 sick leave for the first period of mandatory quarantine or isolation). In order to receive NY COVID-19 sick leave for the second time, the employee is required to submit documentation of the positive COVID-19 test result from a licensed medical provider or testing facility to the employer or to the employer's insurance carrier, if applicable (unless the employer gave the employee the COVID-19 test).
- If an employee is subject to an order of quarantine or isolation and continues to test positive for COVID-19 at the end of the quarantine or isolation period, the employee may not return to work, is automatically deemed subject to an additional mandatory order of isolation, and is entitled to COVID-19 sick leave for the second period of isolation. The employee is required to submit documentation of the subsequent positive COVID-19 test result from a licensed

medical provider or testing facility to the employer or to the employer's insurance carrier, if applicable (unless the employer gave the employee the COVID-19 test that showed the positive result).

Notably, the guidance imposes a limit on the number of times an employee can utilize COVID-19 sick leave. It provides that an employee cannot qualify for this sick leave for more than three orders of quarantine or isolation. Importantly, in order to be eligible for sick leave on the second and third orders, the employee must have received a positive COVID-19 test in the circumstances described above. However, the guidance does state that it is not recommended that an employee who has been quarantined pursuant to a governmental order in the above circumstances receive another COVID-19 test before returning to work (with the exception of nursing home staff).

Significantly, the guidance also appears to require employers to provide employees with paid leave, even if the employee is not subject to an order of quarantine or isolation, if the employer mandates that the employee not report to work due to the employee's exposure or potential exposure to COVID-19 (regardless of whether the exposure occurred in the workplace). In such cases, the guidance states that the employer must pay the employee at the employee's regular rate of pay until the employer allows the employee to return to the workplace, or the employee becomes subject to a mandatory or precautionary order of quarantine or isolation (at which point the employee would receive NY COVID-19 sick leave for the duration of the order).

It is not clear whether this provision in the Jan. 20, 2021 guidance is valid, as it appears to provide more leave than what is authorized by the NY COVID-19 sick leave legislation. Specifically, the statutory text only requires employers to pay employees when they are subject to a governmental order of quarantine or isolation. There is no requirement to otherwise pay employees when no order of quarantine is in place, as the new guidance now seems to suggest is required.

Bond will continue to keep you updated on any further developments regarding this guidance, as well as other labor and employment issues. Please contact [Kerry Langan](#), [Theresa Rusnak](#) or any member of the firm if you have questions.



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