

A Summary of New York's COVID-19 Leave Law

Last week, New York enacted new legislation regarding leave and other benefits for certain employees relating to COVID-19. (The federal government also passed the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act, which we have covered in a [prior blog post](#)). Unlike the federal laws, which take effect on April 2, the state law took effect immediately. Here is a summary of what employees are entitled to receive under this new law.

The new law permits employees to take leave when they are subject to a mandatory or precautionary order of quarantine or isolation issued by New York State, the department of health, a local board of health, or any governmental entity with authority to issue such an order due to COVID-19 (an Order). The amount of leave depends on the size of the employer, which is measured by the number of employees on January 1, 2020.

- For private employers with 0-10 employees, the obligations depend on the company's net income from the prior tax year
 - If the employer's net income was \$1 million or less, then the employee is entitled to unpaid leave for the duration of the Order.
 - If the employer's net income was over \$1 million, the employee is entitled to at least five days of paid sick leave and unpaid leave for the remaining duration of the Order.
- Private employers with 11-99 employees must allow employees to take at least five days of paid sick leave and unpaid leave for the remaining duration of the Order.
- Private employers with 100 or more employees must allow employees to take at least 14 days of paid sick leave.
- Public employers must allow employees and officers to take at least 14 days of paid sick leave.

Employers must provide the above leave without deducting from the employees' (or officers') accrued sick leave.

Employees are entitled to be restored to their job when they return to work after taking this leave. The law also prohibits any discrimination or retaliation against employees for their use of this leave by the employer, the employer's agent, an officer, or agent of any corporation, partnership, or LLC, or any other person. However, the law permits an employer to take personnel action that would have been taken regardless of the employee's request for leave or use of leave under this law.

The law also creates new categories of Paid Family Leave (PFL) and disability benefits. It expressly provides that employees of private employers with less than 100 employees are eligible for these benefits, but the law is silent with respect to public employers and larger private employers.

Eligible employees may apply for the new PFL benefits if they are taking leave because they or their minor dependent children are subject to an Order. They may receive up to \$840.70 per week during the period covered by the Order.

Eligible employees may also apply for disability benefits where the employee is unable to work due to an Order and has exhausted all paid sick leave provided by the employer under this law. There is no waiting period. The maximum weekly benefit is the difference between the maximum weekly PFL benefit and the employee's total average weekly wage from each covered employer, up to a maximum benefit of \$2,043.92 per week.

The PFL and disability benefits under this law may be paid concurrently, starting on the first full day of the unpaid period of disability. However, employees may not collect any benefits that would exceed \$840.70 in PFL and \$2,043.92 in disability benefits per week.

The law contains several exceptions. The first exception applies to employees who: (1) are deemed asymptomatic or have not yet been diagnosed with any medical condition; and (2) are physically able to work while covered by the Order through remote access or other means. These employees are not eligible for leave or benefits under the law.

The second exception applies to employees who: (1) are subject to an Order because they returned to the United States after traveling to a country covered by a level 2 or level 3 travel health notice from the Centers for Disease Control (CDC); (2) the travel was not part of their employment duties or at the direction of their employer; and (3) they were provided notice of the CDC travel restriction and this exception prior to their travel. These employees are not eligible for paid leave or other paid benefits under this law. However, they may use accrued leave from the employer, or if none is available, then they may use unpaid sick leave.

Some employees may be entitled to leave and benefits under both new laws passed this week relating to COVID-19 absences. The New York law specifically addresses how to handle employees who are entitled to leave and/or benefits related to COVID-19 under both the New York law and any federal law or regulation (including, but not limited to, the federal [Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act](#)). Specifically, employees can only obtain any leave and benefits under the New York law that are in excess of any leave or benefits provided by the federal law or regulations.

Finally, the New York law eliminates the waiting period for unemployment claims where the employer closes for a reason related to COVID-19 or due to a mandatory order of closure from a governmental entity.

If you have any questions about this Information Memo, please contact [Katherine S. McClung](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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