

New York Department of Labor Issues Guidance on Paid Leave for COVID-19 Vaccinations

On March 12, 2021, Governor Cuomo signed a new law that grants paid leave to employees to get vaccinated for COVID-19. Under the statute, employees may take up to four hours of paid time off per vaccine injection. A link to our prior post discussing the statute is available [here](#).

The text of the new law is silent on several key issues, which has left employers with numerous unanswered questions. Following the enactment of the law, the New York Department of Labor (NYDOL) issued [guidance](#) in the form of Frequently Asked Questions (FAQs) addressing some of these issues. Specifically, NYDOL provides the following information regarding documentation, notice, retroactivity, amount of leave, employer coverage, reason for leave, rate of pay and collective bargaining agreements:

- **Documentation:** The law does not prohibit employers from requesting proof of vaccination. However, employers are encouraged to consider applicable confidentiality requirements prior to requesting such documentation.
- **Notice:** The law does not prevent an employer from requiring an employee to provide notice prior to taking leave to get vaccinated.
- **Retroactivity:** The law does not create a retroactive entitlement to leave. This means that any employees who were already vaccinated as of March 12, 2021 are not entitled to additional paid leave under this law.
- **Amount of Leave:** The maximum number of hours to which an employee is entitled under this law depends on the number of required COVID-19 vaccine injections. Employees may take of four hours of leave *per vaccine injection*. This means, for example, that if a vaccine requires two injections, the employee is entitled to two periods of paid leave of up to four hours each.
- **Employer Coverage:** Both public and private employers are covered.
- **Reason for Leave:** An employee may only take leave under this law for his or her own vaccine injection, not for vaccination of a relative.
- **Rate of Pay:** The law requires employees to be paid at their regular rate of pay.
- **Collective Bargaining Agreements:** The rights afforded under this law may be waived in a collective bargaining agreement that specifically references Labor Law §196-c.

While the FAQs provide some clarity on the leave entitlement, several questions remain unanswered. For example, NYDOL does not opine on what constitutes a “sufficient period of time” to receive a COVID-19 vaccine. Rather, it merely reiterates the statutory requirement that a period of leave is limited to a maximum of four hours. Further, NYDOL does not address whether an employee may take leave under this law due to symptoms or side effects associated with a vaccine injection.

For specific information regarding your company’s obligation to provide paid leave for COVID-19 vaccine injections, please contact the Bond attorney with whom you are regularly in contact.

