




Coronavirus:
Update and Discussion on Continuing Legal
and Practical Issues Related to COVID-19

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Introduction



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NYS PSL – Three Big Things to Have in Mind



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Provider Relief Fund Reporting Requirements



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Reopening FAQs



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Re-Opening FAQs

- Do I have to / Should I keep our employee daily “check in” records?
- What if an employee reports symptoms, but refuses to go to the doctor or get tested for COVID-19?
- How should we respond to an employee who requests leave for two days per week while his children are engaged in remote learning?
- Do I need to update my infection control and workplace safety plans?
- We are allowing more remote work than usual to continue – even though we are “open”– and wonder, should we have a policy in place?
- An employee is scheduled to travel to a “hot state” and we cannot accommodate both the vacation and a two-week quarantine. What can we do?



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Wage and Hour Claims Arising from the Pandemic



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Wage and Hour Claims Arising From COVID-19 Leave



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FFCRA – How Many Hours of Pay?

- Average hours worked over two-week period based on normal schedule
- If no normal schedule, use six-month average
- If employee has not been employed for six months:
 - Number of hours that employer and employee agreed that employee would work upon hire
 - If no such agreement, then average hours worked per week during entire term of employment



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FFCRA – How Many Hours of Pay? (cont.)

- Overtime hours: Employees will receive payment for overtime hours **without** overtime premiums
- E.g., full-time employee who normally works 50 hours per week needs 2 weeks off due to governmental quarantine order
 - Week 1: 50 hours of EPSL
 - Week 2: 30 hours of EPSL*

* Subject to daily and total EPSL caps



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FFCRA – What Rate of Pay?

- Average regular rate for all full workweeks during six-month period ending on first date of EPSL or EFMLA
 - No need to recalculate for subsequent leaves
- If length of employment is less than six months, the average regular rate for each work employee has worked for employer
- **Make sure you include all amounts that must be included in regular rate!**



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FFCRA – What Rate of Pay? (cont.)

- For employees paid exclusively on salary basis, use hourly equivalent of salary
 - Specific number of hours each week
 - Varying hours
 - **Reasonable estimate or records of hours worked**



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NY COVID-19 Leave

- 0 / 5 / 14 days of paid leave, depending on employer size
 - Calendar days, not work days
- What rate of pay?
 - “The amount that the worker would have otherwise received had they been continuing to work for that period based upon the amount that the employee was scheduled or would have been scheduled had the employer’s operations continued in its normal due course”
 - What about overtime? Non-discretionary bonuses? Commissions?
 - “At least 5/14 days at regular rate of pay”
 - Employees with variable pay? Use a “representative period of time” to set employee’s average daily pay rate



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Additional COVID-19 Leave Claims

- Failure to provide leave as required
- Retaliation for taking leave



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Assessing the Metrics – Where are We?



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Region	Testing/Tracing Targets		New Infections		Severity of Infections	Hospital Capacity	
	Maintain 30 per 1,000 Diagnostic Tests	Maintain Required Case and Contact Tracing Capacity	% Positive Tests per Day (7-Day Rolling Avg)	New Cases per 100K (7-Day Rolling Avg)	Break New Hospitalizations per 100K (7-Day Rolling Avg)	Share of Total Hospital Beds % Available (7-Day Rolling Avg)	Share of ICU Beds % Available (7-Day Rolling Avg)
STATEWIDE	82,908 / 19,542	9,628	1.0%	4.38	0.40	25%	37%
Capital Region	4,654 / 1,085	278	0.6%	2.69	0.12	27%	40%
Central New York	3,229 / 775	458	1.0%	4.03	0.24	29%	37%
Finger Lakes	5,356 / 1,203	468	0.5%	2.17	0.17	35%	55%
Long Island	11,319 / 2,839	1,308	1.0%	3.88	0.37	22%	28%
Mid-Hudson	9,312 / 2,322	1,456	1.7%	6.76	0.50	30%	51%
Niagara Valley	2,517 / 485	139	0.4%	2.24	0.41	43%	47%
New York City	33,728 / 8,399	4,648	1.1%	4.45	0.48	19%	26%
North Country	1,580 / 419	12	0.3%	0.99	0.10	40%	57%
Southern Tier	6,222 / 633	114	0.9%	8.42	0.34	42%	43%
Western New York	4,991 / 1,381	747	1.2%	4.32	0.46	33%	53%



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Yesterday's Numbers

REGION	COUNTY	ZIP	% POSITIVE	TESTS	POSITIVES
Mid-Hudson	Rockland	10977	30%	209	63
Mid-Hudson	Rockland	10952	25%	114	29
Mid-Hudson	Orange	10950	22%	73	16
Mid-Hudson	Rockland	10901	18%	51	9
NYC	Kings	11219	17%	155	26
NYC	Kings	11210	11%	148	17
Southern Tier	Broome	13905	10%	131	13
NYC	Kings	11204	9%	139	13
NYC	Kings	11230	9%	269	23
NYC	Queens	11367	6%	114	7



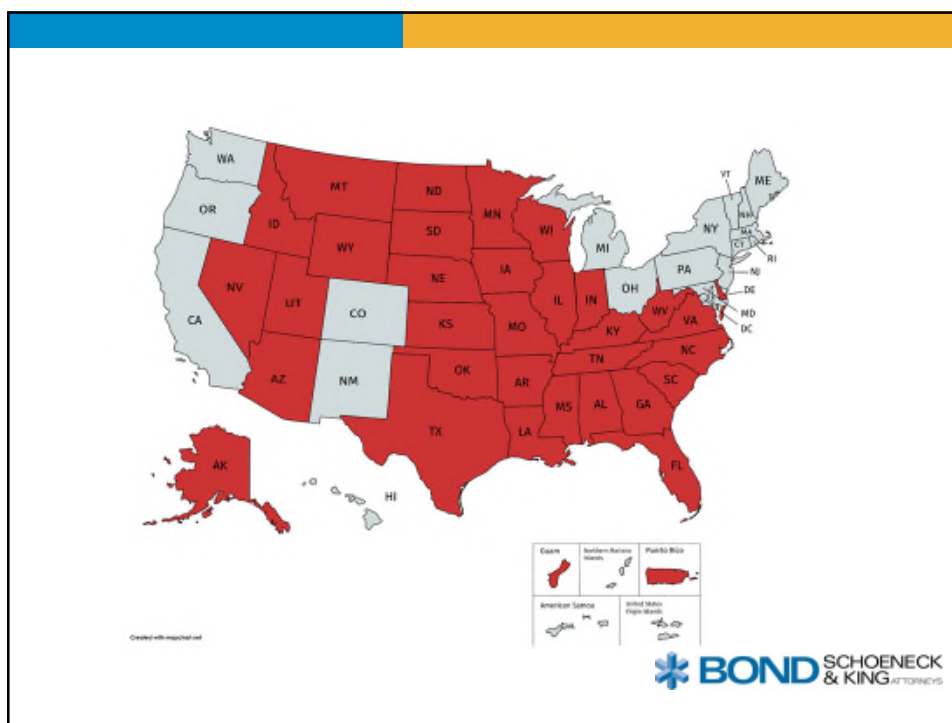
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International Travel Quarantine

- Travelers coming to NY from any “Level 2” or “Level 3” country must quarantine for 14 days.



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