

State guidance on virus sick leave law

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The New York State Department of Labor has issued recently updated guidance regarding the state's COVID-19 Paid Sick Leave Law that among other things clarifies how many times employees can access paid sick leave benefits.

Separately, on the federal level, payroll credits for certain employers that voluntarily offer paid sick and paid family leave have been extended and expanded under the Families First Coronavirus Response Act (FFCRA).

"I think employers definitely need to keep abreast of these changes," says Stephanie Hoppe Fedorka, an attorney in the Syracuse office of Bond, Schoeneck & King. "The obligations under federal and state law [regarding paid sick and paid family leave] can be complicated."

In fact, they can often overlap, so it's best consulting with counsel, she says.

Some clarifications

But generally speaking, updated guidance tied to New York's COVID-19 Paid Sick Leave Law, which provides up to 14 days of paid sick leave during any order of quarantine or isolation, was issued by the Labor Department in late January. Among the provisions it clarifies is that employees can qualify for sick leave for no more than three orders of quar-



Jessica Baquet, partner at Jaspán Schlesinger LLP in Garden City, says legal challenges are possible.

antine or isolation, says Fedorka, noting the original law didn't specify an exact number.

Because it's just guidance and goes beyond what the original legislation states, there may be legal challenges, says Jessica Baquet, chairwoman of the labor and employment practice group at Jaspán Schlesinger LLP in Garden City.

Some may argue that the Labor Department is overstepping its authority, she says.

In response, the Labor Department pointed to language in the original paid sick leave legislation, that states "the commissioner of labor shall have authority to adopt regulations, including emergency regulations, and issue guidance to effectuate any of the provisions of this act."

But barring any legal challenges, "the guidance should be adhered to by employers in consultation with employment

FAST FACT

Twenty-seven percent of **small employers** reported having an employee take COVID-19-related **paid sick leave or family leave** as mandated and offered through the Families First Coronavirus Response Act, according to an NFIB Research Center survey late last year.

counsel," says Daniel Gomez-Sanchez, a shareholder at Littler Mendelson in Melville, who outlines the guidance..

"It will be utilized by the . . . [Labor Department] for enforcement purposes," he says.

He said that making it clear that an employee may utilize paid sick leave for only up to three orders of quarantine or isolation is one of the guidance's biggest take-aways.

And there are restrictions regarding the second and third orders.

The updated guidance also clarifies that if an employer mandates an employee who is not otherwise subject to a COVID-19 quarantine or isolation order must remain out of work due to exposure or potential exposure, the employer is required to pay the employee until the employer permits the employee to return to work or the employee becomes subject to a COVID-19 order, he says.

Separately, on March 11, President Joe Biden signed the American Rescue Plan Act of 2021 (ARPA), Fedorka says. It didn't create a new federal mandate of paid sick and family leave. In-



Jeff Agranoff, of Jericho-based Grassi Advisors & Accountants, has been advising clients to provide FFCRA leave.

stead it extended and expanded the availability of federal payroll tax credits for covered employers who voluntarily choose to continue offering FFCRA-style paid sick and paid family leave, she says.

FFCRA required employers with fewer than 500 employees to provide two weeks (up to 80 hours) of Emergency Paid Sick Leave and up to 10 weeks of paid Expanded Family and Medical Leave (EFML) for qualifying COVID-19-related reasons, Fedorka says.

But that federal mandate expired at the end of 2020.

Payroll tax credit

The Consolidated Appropriations Act of 2021, however, extended a payroll tax credit to employers who voluntarily provided this leave through March 31 and ARPA has further extended the credit through Sept.

30, she says.

ARPA also expanded qualifying reasons for which leave can be taken and the credit claimed, Fedorka says.

Keep in mind that while federal FFCRA is no longer mandatory, New York employers under state law must provide paid quarantine leave for employees who take leave due to a mandatory or precautionary order of quarantine or isolation, Baquet says.

But New York's law is more narrow than FFCRA in certain cases, she says. For example, the state law only provides for leave where employees are subject to a government order of quarantine or isolation. FFCRA provides for leave beyond that for other instances including when someone's seeking a COVID-19 diagnosis.

Jeff Agranoff, human resources consulting principal at Jericho-based Grassi Advisors & Accountants, said clients have both been interested and are taking advantage of the credit.

Many larger employers (100-plus employees) under New York law have to offer up to 80 hours of paid leave anyway so they might as well get the credit, he says.

"I've been advising clients to voluntarily provide FFCRA leave," he says, noting it's a dollar-for-dollar reduction in an employer's payroll taxes.

While it varies, for many larger employers, the credit could be up to \$511 daily per employee, Agranoff says.

"It makes sense to take the credit," Agranoff says.

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