

Summary of Recent Federal and New York State Legislation Providing Paid Sick Leave in Response to the Coronavirus Pandemic

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Client Advisory

March 20, 2020 by Melissa J. Erwin and Leonardo Trivigno

On March 18, 2020, President Donald Trump and New York Governor Andrew Cuomo each signed emergency legislation to address the disruptions caused by the Coronavirus (COVID-19) pandemic. While the legal landscape remains fluid, this advisory summarizes the paid sick leave provisions of each law.

The Families First Coronavirus Response Act

The federal legislation, the Families First Coronavirus Response Act ("Families First Act"), mandates that all employers with fewer than 500 employees provide paid sick leave to employees who are unable to work (or telework) because of one of the following conditions:

1. The employee is subject to a quarantine or isolation order by federal, state, or local government;
2. The employee has been advised by a health care provider to self-quarantine;
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. The employee is caring for an individual who falls under category 1 or 2, above; or
5. The employee is caring for a son or daughter whose school has been closed (elementary or secondary only) or the child care provider is unavailable to provide care due to a governmental order.

Under the act, full-time employees are entitled to up to 80 hours of sick time, and part-time employees are entitled to sick time that equals the number of hours that such employee works, on average, over a 2-week period. The total amount that an employee may receive is capped at (i) \$511 per day or \$5,110 in total for an employee who takes leave due to categories 1-3 above, or (ii) \$200 per day or \$2,000 in total for an employee who takes leave due to categories 4-5 above. Employees who take leave due to categories 4-5 are only entitled to two-thirds of their regular pay.

Employers are entitled to a tax credit for sick leave paid under the act. Employers are prohibited from requiring an employee to exhaust existing accrued paid leave before using the leave provided by the Families First Act and are prohibited from firing an employee who takes the leave provided by the law. Employers are required to post a notice describing the requirements of the law. A model notice is expected to be posted by the Department of Labor by April 9.

The Department of Labor is expected to issue regulations that may clarify or, in some cases, change the summary set forth above. The Families First Act will go into effect no later than April 2.

New York Act

The legislation passed in New York only covers employees who are "subject to a mandatory or precautionary order of quarantine or isolation" issued by the State of New York, New York State Department of Health, local Board of Health or any government entity authorized to issue an order. Employees who decide to self-quarantine without an appropriate order are not eligible for COVID-19 quarantine leave. Additionally, employees are not entitled to paid sick leave if they are subject to an order of quarantine or isolation because they traveled to a country for which the Centers for Disease Control and Prevention ("CDC") has a level two or level three travel health notice, provided (i) that such travel was not taken as part of the employee's employment or at the direction of the employee's employer, and (ii) the employee received notice of the CDC's travel health notice and the limitations of the New York law.

Category of Employer

Employee Entitled to Receive

Employers with ten or fewer employees[1] and less than \$1 million in income in the previous tax year

- Job-protected unpaid leave until termination of the mandatory or precautionary order.
- During the period in which the mandatory or precautionary order is in effect, the employee is eligible for NY Paid Family Leave and NY State disability benefits.

Employers with either (i) ten or fewer employees and more than \$1 million in income in the previous tax year, or (ii) eleven to ninety-nine employees

- Five days of paid sick leave.
- Job-protected unpaid leave until termination of the mandatory or precautionary order.
- After completion of five days of paid sick leave, the employee is eligible for NY Paid Family Leave and NY State disability benefits.

Employers with one hundred or more employees

- At least 14 days of paid sick leave during the period in which the mandatory or precautionary order is in effect.

Public employers, including New York State, counties, cities, towns, villages or school districts

- At least 14 days of paid sick leave during the period in which the mandatory or precautionary order is in effect.

Employees cannot be required to use their existing sick leave accruals or other accrued paid time off for COVID-19 quarantine order leave. Employees who are subject to a quarantine order and are showing symptoms may be able to use paid family leave after using available quarantine paid sick leave.

Employees who need to take advantage of paid family leave because a dependent child is subject to a COVID-19 quarantine order need to complete the Request for COVID-19 Quarantine Leave for Minor Child package. (The forms can be found at <https://paidfamilyleave.ny.gov/COVID19>) Once the employee submits the form to the employer, the employer must complete the forms and return to the employee within 3 days. The employee must then submit the form (within 30 days of the start of the leave), along with the mandatory quarantine order, to the employee's disability and paid family leave insurance carrier.

The New York law does not apply where an employee (i) is asymptomatic or has not been diagnosed with any medical condition, and (ii) is able to telework.

The New York law prohibits employers from retaliating against an employee who takes the leave provided under the law.

To the extent that an employee is entitled to receive benefits under the Families First Act, that employee is only entitled to receive the benefits provided by the New York law that are *in excess of* those provided by the Families First Act.

The New York law gives the Commissioner of Labor the authority to adopt regulations and issue guidance to effectuate any provision of the law, but no regulations or guidance have yet been issued. The law went into effect on March 18, 2020.

Conclusion

Given the rapid developments on the ground and the ever-evolving legal landscape, including forthcoming regulatory guidance regarding both federal and New York state legislation, organizations are encouraged to consult legal counsel to assist in assessing the applicability of the various statutes and regulations, evaluating compliance obligations and advising on steps to take to ensure compliance.

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[1] For each category of employer, the number of employees is measured as of January 1, 2020.

*Carter Ledyard has created a COVID-19 Response Group to monitor the evolving legal landscape, address client questions and ensure client compliance with the laws and regulations issued in response to the COVID-19 pandemic. The Carter Ledyard COVID-19 Response Group consists of **Jeffery S. Boxer** (212-238-8626, boxer@clm.com), **Judith A. Lockhart** (212-238-8603, lockhart@clm.com), **Bryan J. Hall** (212-238-8894, hall@clm.com), **Alexander G. Malyshev** (212-238-8618, malyshev@clm.com), **Melissa J. Erwin** (212-238-8622, erwin@clm.com) and **Leonardo Trivigno** (212-238-8724, trivigno@clm.com). Clients should contact the attorneys listed above or their regular CLM attorney for any questions concerning legal obligations arising from the COVID-19 pandemic.*

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