



NEW YORK'S PAID FAMILY LEAVE AND BENEFITS LAW

New York Governor Andrew Cuomo signed into law employee-protective measures to address the current COVID-19 crisis. New York State's Paid Family Leave and Benefits Law ("PFLBL") went into effect immediately, unlike the recently-enacted federal legislation, the Families First Coronavirus Response Act ("FFCRA"), which will be effective April 1, 2020.

The State law mandates that New York employers offer paid sick leave and job protections for workers quarantined as a result of the coronavirus outbreak.

Employers Are Obligated to Provide Paid/Unpaid Leave for Quarantined Employees

All New York employers must provide sick leave to employees who have been subjected to mandatory or precautionary orders of quarantine or isolation due to COVID-19 (issued by New York State, a local health board, or any other governmental entity authorized to issue such order). The employer's size and net income determines the duration of that leave, and whether it is paid or unpaid:

- Employers with 10 or fewer employees (as of Jan. 1, 2020), and net income of *less* than \$1 million in the previous tax year, must provide unpaid sick leave until the termination of quarantine or isolation. The employer must provide employees access to PFLBL and disability benefits for the period of quarantine, including wage replacement for their salaries up to \$150,000.
- Employers with 10 or fewer employees (as of Jan. 1, 2020), and net income of *more* than \$1 million in the previous tax year, must provide at least 5 days paid sick leave, then unpaid sick leave until the termination of quarantine or isolation. After the 5-day leave, the employer must provide employees access to PFLBL, including wage replacement for their salaries up to \$150,000.
- Employers with 11 to 99 employees (as of Jan. 1, 2020) must provide at least 5 days paid sick leave, then unpaid sick leave until the termination of quarantine or isolation. After the 5-day leave, the employer must provide employees access to PFLBL, including wage replacement for their salaries up to \$150,000.
- Employers with 100 or more employees (as of Jan. 1, 2020), and all public employers, must provide at least 14 days of paid sick leave during any order of quarantine or isolation.

In all instances, the paid/unpaid leave noted above must be provided *without* loss to any other accrued sick leave provided by the employer that the employee has available. Such leave will be added to any other employer-provided sick leave.

Disability & Paid Family Leave Usage:

As outlined above, the new law allows employees who receive less than 14 days of quarantine-related paid leave to use existing PFLBL benefits for the remainder of the quarantine or isolation period.

CLIENT ALERT

March 27, 2020

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The law expands the coverage of “disability” to expressly cover an employee’s inability to work as a result of a quarantine or isolation order, and expands the coverage of NYPFL to expressly cover an employee’s leave from work due to such an order, or if the employee’s child requires care due to a quarantine or isolation order.

Notably, the new law does *not* expressly permit employees of larger employers (employers with more than 100 employees) to use existing NYPFL or disability benefits.

The law states that paid sick leave benefits and disability benefits will run concurrently. Employees will be able to earn a weekly maximum of \$840.70 in NYPFL benefits and \$2,043.95 in disability benefits. Significantly, the prior 7-day waiting period to collect disability benefits has now been eliminated effective immediately.

Additional, Notable Provisions:

- *Telecommuting Employees without Symptoms:* Employees are *not eligible* to take sick leave if they are deemed *asymptomatic* or have not yet been diagnosed with a medical condition and are physically able to work remotely or through other means while under a mandatory quarantine or isolation.
- *Job-Protected Leave & Anti-Retaliation Measure:* Employers are required to place the employee in their same position following the leave, with the same pay and other terms and conditions of employment. The law’s anti-retaliation measure prohibits employers from discharging, penalizing, or otherwise retaliating against any employee for taking this protected leave. The new law does not address employee’s rights if the position no longer exists when the employee is able to return to work following quarantine or isolation.
- *Integration with Local Sick Leave Laws:* New York State employers would remain subject to local sick leave ordinances that meet or exceed the requirements of the State’s new quarantine leave law.
- *Coexistence with Newly Enacted Federal Law:* The new law also specifies New York’s law will supplement the sick leave and/or other benefits to employees provided by the Federal Government under the FFCRA, up to difference between the benefits available under New York’s law and the smaller benefits available under the FFCRA.
- *Separate Provisions for Employees Who Recently Returned from Non-Business Travel:* The new law specifies that employees who have returned to the United States after **non-business-related** travel to a country which the Centers for Disease Control (“CDC”) issued a level two or three travel health notice (e.g., most European countries, Iran, and China) are *not* eligible for the law’s benefits, if the employee was provided notice of the travel advisory and chose to travel nonetheless. Employees falling under this category *are* entitled to use any accrued leave provided by the employer. To the extent that the employee does not have accrued leave, the employee may use unpaid leave for the duration of the quarantine or isolation.
- *Unemployment Benefits Waiting Period Waived:* There is no longer an unemployment insurance benefits one-week waiting period. Employees who are unable to work because their employer is closed for a reason related to COVID-19 are now immediately able to apply and receive unemployment benefits.

How We Can Help

Oved & Oved is available to advise and draft stand-alone sick leave policies with these new sick leave rights to ensure such policy temporarily supplements the company’s existing policies for existing leave of absence, sick leave, and PTO, as well as any statutory leave requirements as provided under the FFCRA.