
ALERT MEMORANDUM

New York Mandates COVID-19 Related Emergency Paid Sick Leave and Job Protection

March 19, 2020

On March 18, 2020, the New York State Assembly approved, and Governor Cuomo signed into law, a bill (the “Act”)¹ providing emergency paid sick leave and other benefits to employees subject to a government-mandated quarantine or isolation period due to COVID-19 (“Coronavirus”). As passed, the Act only applies to workers affected by the Coronavirus and does not include, as originally proposed, a non-pandemic related statewide paid sick leave program, which the Governor said will be revisited in the future. The Act is effective immediately.

If you have any questions concerning this memorandum, please reach out to your regular firm contacts in the [Executive Compensation and ERISA](#) group or contact our COVID-19 task force by [clicking here](#).

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¹ Assembly Bill 10152 available [here](#).
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Covered Employees

- Employees who are subject to a mandatory or precautionary quarantine or isolation issued by the State of New York, the State department of health, a local board of health or any other governmental entity duly authorized to issue such order due to Coronavirus. However, employees who are asymptomatic or have not yet been diagnosed with a medical condition and who are able to work while under such quarantine or isolation (*e.g.*, through remote working) are not covered under the Act.
- Any otherwise covered employee who is subject to such quarantine or isolation because such employee (1) has returned to the U.S. after traveling to a country for which the U.S. Centers for Disease Control and Prevention (the “CDC”) has a level two or level three travel health notice, (2) engaged in such travel for personal (non-employment-related) reasons, and (3) was provided notice of the CDC’s notice of travel warnings and the exclusion of benefits mandated by this subsection of the Act, will not be entitled to any paid sick leave that would otherwise have been provided under the Act.

Covered Private Sector Employers² and Mandated Benefits

- ***Employers with 10 or fewer employees.***
Employers with 10 or fewer employees³ as of January 1, 2020 must provide each covered employee unpaid sick leave for the duration of the

quarantine or isolation period; provided that if such employer has a net income equal to or greater than \$1 million for its tax year ending in 2019, it must provide covered employees with at least 5 days of paid sick leave during such period. Covered employees will also be eligible for paid family leave benefits⁴ and benefits due pursuant to disability⁵ during the period of quarantine or isolation—with the eligibility of covered employees of employers who had achieved or exceeded the \$1 million net income threshold commencing after they have exhausted their 5 days of paid sick leave.

- ***Employers with between 11 and 99 employees.***
Employers with between 11 and 99 employees as of January 1, 2020 must provide each covered employee with at least 5 days of paid sick leave and unpaid leave for the duration of the quarantine or isolation period. After covered employees exhaust their 5 days of paid sick leave, the employee will also be eligible for paid family leave benefits and benefits due pursuant to disability.
- ***Employers with 100 or more employees.***
Employers with 100 or more employees as of January 1, 2020 must provide covered employees with at least 14 days of paid sick leave during the quarantine or isolation period. The Act does not otherwise require such employers to provide additional unpaid leave or access to family leave or disability benefits.

² The Act also covers public employers, a discussion of which is beyond the scope of this memo.

³ It is unclear from the legislative text whether only employees based in New York State are counted for these purposes.

⁴ Although Paid Family Leave is generally mandated by law, for purposes of this Act only, Paid Family Leave under Article 9 of the New York Workers’ Compensation Law means any leave taken by an employee who (a) is subject to government-issued mandatory or precautionary quarantine or isolation due to Coronavirus or (b) is providing care for a minor dependent child who is subject to such quarantine or isolation period. The Act caps the amount of paid family

leave benefits a covered employee can collect at \$840.70 per week.

⁵ Although short-term disability is generally mandated by law, for purposes of the Act only, an employee may qualify for short-term disability upon exhaustion of paid leave provided under the Act if the employee is unable to perform duties of employment as a result of government-issued mandatory or precautionary quarantine or isolation. The Act provides that the maximum weekly benefit a covered employee may receive pursuant to disability shall be the difference between the maximum weekly family leave benefit and such employee’s total average weekly wage, up to a maximum benefit of \$2,043.92 per week.

Impact on Accrued Sick Leave

In all cases, the leave mandated under the Act will be provided without loss of a covered employee's previously accrued but unused sick leave.

Job Protection

The Act provides that upon a covered employee's return to work following any leave provided for thereunder, the employee shall be restored to his or her prior position of employment. In addition, employers and their agents are prohibited from taking any adverse employment action, including termination, retaliation, penalty or threat thereof, against any employee because such employee has taken leave pursuant to the Act.

Effective Date

Requirements related to emergency sick leave benefits under the Act will be effective immediately.

Coordination with Federal Law

To the extent the federal government passes any law or regulation providing sick leave or other employee benefits related to Coronavirus, then the emergency sick leave benefits provided under the Act will no longer be available; however, if the benefits provided under the Act are in excess of those provided by any such federal law, then covered employees will be entitled to the excess of benefits provided under the Act. In this regard, employers should take note of the Families First Coronavirus Response Act,⁶ which mandates paid sick leave and expanded federal family leave protections, for employees of employers with fewer than 500 U.S. based employees, which was signed into law by President Trump on March 18, 2020.⁷

If you have any questions or would like to discuss this, or other topics relating to the Coronavirus outbreak, further, please do not hesitate to reach out to your regular contacts in the [Executive Compensation and ERISA](#) group or contact our COVID-19 task force directly by [clicking here](#).

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⁶ See our alert memorandum, "Families First Coronavirus Response Act: Paid Sick Day Mandate and Expanded FMLA Protections for Employees of Small Employers", available [here](#).

⁷ While beyond the scope of this memorandum, state paid leave laws generally have been found not to be subject to ERISA preemption on the basis that they relate to payroll practices that are not considered welfare benefit plans under ERISA.