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NEW YORK GOVERNMENT REACHES AGREEMENT ON MANDATORY SICK LEAVE IN RESPONSE TO CORONAVIRUS OUTBREAK

March 18, 2020

Employment Law Alert

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The state of New York has responded to the coronavirus outbreak with proposed legislation to provide immediate relief for employees who are subject to mandatory or precautionary quarantine or isolation due to the outbreak. This alert discusses what employers need to know about the proposed law, which we anticipate will be passed imminently.

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New York has responded to the coronavirus with an agreement to provide immediate relief for employees who are subject to mandatory or precautionary quarantine or isolation due to the outbreak. The proposed law, which we anticipate will be passed imminently, protects employees by requiring employers to provide additional “coronavirus-specific” paid sick leave to employees, and expanding the state’s disability and paid family leave benefits^[1] to cover certain coronavirus-related leave. The governor and legislature are also using this crisis as an

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opportunity to implement a new paid sick leave mandate upon employers beginning January 21, 2021, separate and apart from the leave relating to coronavirus.

Similar to other recent legislation passed in favor of workers, such as paid family leave benefits and increases to the minimum wage, the new sick leave requirements (both relating to the coronavirus crisis and going forward) purport to provide for a tiered approach for benefits based on the size of the employer. The full details are described below.

BENEFITS FOR EMPLOYEES QUARANTINED OR ISOLATED

In response to the immediate crisis, “each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19” will be provided with job-protected leave pursuant to the following schedule:

Employer size	Employee benefit
Ten (10) employees or fewer, and less than \$1 million income in previous tax year	Unpaid leave until end of quarantine or isolation period
Ten (10) employees or fewer, and greater than \$1 million income in previous tax year	Five (5) days paid leave, and unpaid leave for remainder of quarantine or isolation period
Eleven to ninety-nine (11-99) employees	Five (5) days paid leave, and unpaid leave for remainder of quarantine or isolation period
One hundred or more (100+) employees	Fourteen (14) days paid leave, and unpaid leave for remainder of quarantine or isolation period
Public employees	Fourteen (14) days paid leave, and unpaid leave for remainder of quarantine or isolation period

In addition, for any periods of quarantine or isolation during which the employee is not receiving paid leave from his or her employer, the employee will immediately be eligible for paid family leave and disability benefits under the respective statutes. To this end, the statute will: (1) expand the definition of “disability” for purposes of the workers’ compensation law to include “the inability to do work because of a mandatory or precautionary order of quarantine after the employee has exhausted all paid sick leave,” which will entitle eligible employees to a percentage of their average weekly wages, up to a maximum of \$2,043.92 in benefits per week; and (2) expand the definition of “family leave” for purposes of the workers’ compensation law to include (a) leave taken to comply with a mandatory or precautionary order of quarantine or (b) to provide care for the employee’s minor, dependent child who is subject to a mandatory or precautionary order of quarantine, which will entitle eligible employees a percentage of their average weekly wages up to a maximum of \$840.70 in benefits per week.

The statutory leave and benefits set forth above will only be available to employees who have been officially quarantined or isolated by the government; they shall not be available to employees who are in voluntary quarantine or isolation, who merely fear they have been infected by the virus, or who object to reporting to work for fear of exposure to the virus. In addition, the law will not be applicable to employees who have been quarantined or isolated, but who are asymptomatic, not yet diagnosed with any medical condition, and are physically able to work remotely. It further does not contemplate any benefits for employees who are home caring for their children due to school closures precipitated by the coronavirus pandemic.

The proposal also expressly excludes from benefits any employee who has traveled to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice, provided that the travel was not taken as part of the employee’s employment or at the employer’s direction, and provided further that the employee had notice of the CDC warnings *and* that he or she would be ineligible for benefits under

this statute. Any employee denied benefits as a result of such travel, however, must be permitted to use their existing accrued but unused paid time off balances for this purpose.

The proposed statute is clear that the leave it requires is in addition to any sick leave or paid time off already provided by the employer, and employers are prohibited from charging any employee's existing balance of accrued paid time off for this purpose.

ANNUAL SICK LEAVE REQUIREMENTS, AS OF JANUARY 1, 2021

Assuming the legislation is ultimately passed, beginning January 1, 2021, employers will be required to provide all employees with sick leave at their regular rates of pay, pursuant to the following schedule:

Employer size	Employee benefit
Four (4) or fewer employees, and less than \$1 million net income in previous tax year	Up to forty (40) hours of unpaid sick leave
Four (4) or fewer employees, and greater than \$1 million net income in previous tax year	Up to forty (40) hours of paid sick leave
Five to ninety-nine (5-99) employees	Up to forty (40) hours of paid sick leave
One hundred or more (100+) employees	Up to fifty-six (56) hours of paid sick leave

Employers will be permitted to provide employees with their full sick leave allotment at the beginning of the calendar year, or the leave can be provided on an accrual basis, provided that employees must accrue sick leave at a rate of not less than one hour per every thirty hours worked. Accruals will begin one hundred and eighty (180) days after the legislation is enacted (unless the Department of Labor designates an earlier effective date), or upon the employee's commencement of employment, whichever is later. In addition, although all accrued but unused sick leave must be carried over year-to-year, an employer with fewer than one hundred employees will be permitted to limit an

employee's use of sick leave to forty (40) hours per calendar year, an employer with one hundred or more employees will be permitted to limit an employee's use of sick leave to fifty-six (56) hours per calendar year, and no employer shall be required to pay out any accrued but unused sick leave upon an employee's termination from employment.

Employees may use this job-protected leave for:

- a mental or physical illness, injury, or health condition of the employee or the employee's family member;
- the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or the employee's family member; or
- an absence from work due to domestic violence, a sexual offense, stalking, or human trafficking so that the employee can avail himself or a family member of services or assistance.

For purposes of the statute, a family member includes an employee's child (including a biological, adopted, or foster child, a legal ward, or a child of an employee standing in loco parentis), spouse, domestic partner, parent (including a biological, foster, step- or adoptive parent, legal guardian, or person who stood in loco parentis when the employee was a minor child), sibling, grandchild or grandparent, as well as the child or parent of an employee's spouse or domestic partner.

Nothing in the proposed statute prevents employers who provide sick leave on a more generous basis than that required from continuing to do so, provided their sick-leave policies meet the minimum requirements of the statute, and employees are permitted to use such leave for the purposes set forth above. Similarly, employers with existing sick-leave or time-off policies that meet or exceed the statutory accrual, carryover, and use requirements will not be required to provide any additional leave to employees as a result of the statute. Lastly, the statute also does not diminish the provisions of any other local sick leave law (including the New York City Earned Sick and Safe Time Act), and the statute permits New York City to enact and enforce additional legislation that meets or exceeds the standards of the statute.

- We have covered New York's paid family leave laws in prior alerts: ["New York passes landmark legislation raising minimum wage and mandating paid family leave,"](#) April 06, 2016; ["New York Paid Family Leave: employer FAQs answered,"](#) November 13, 2017; ["New York paid family leave is here: more employer FAQs answered,"](#) January 02, 2018; and ["New York State Paid Family Leave Benefits Law update: new guidance for 2019,"](#) December 11, 2018.

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