

Recent Updates to New York State COVID Leave Law



March 5, 2021 | **CLIENT ALERTS**

In March 2020, New York State enacted legislation authorizing paid leave for employees if they or their minor dependent children are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 ("COVID Leave"). New York State subsequently issued supplemental guidance in January 2021 expanding employees' rights to COVID Leave benefits by modifying the eligibility and pay requirements. This new guidance modified when an order is required to qualify for leave, permits multiple benefits for up to 3 leave periods, and requires employers to pay employees in certain circumstances, independent from COVID Leave entitlements.

COVID Leave has provided employees with either unpaid or paid leave and, in certain circumstances, access to enhanced paid family leave and disability benefits. The amount of COVID Leave and how it is funded is determined by the size of the employer.

- Businesses with 10 or fewer employees as of January 1, 2020 and a net annual income of one million dollars or less must provide employees with unpaid COVID Leave for the duration of the

order of quarantine or isolation. However, employees are able to access enhanced paid family leave and disability benefits up to \$2,884.62 per week.

- Businesses with 10 or fewer employees as of January 1, 2020 and a net annual income greater than one million dollars must provide employees with at least 5 days of paid COVID Leave and unpaid COVID Leave for the duration of the order of quarantine or isolation. Employees are able to access enhanced paid family leave and disability benefits up to \$2,884.62 per week during the remainder of the unpaid COVID Leave.
- Businesses with 11 to 99 employees as of January 1, 2020 must provide employees with at least 5 days of paid COVID Leave and unpaid COVID Leave for the duration of the order of quarantine or isolation. Employees are able to access enhanced paid family leave and disability benefits up to \$2,884.62 per week during the remainder of the unpaid COVID Leave.
- Businesses with 100 or more employees as of January 1, 2020 must provide employees with at least 14 days of paid COVID Leave. However, employees are unable to avail themselves of paid family leave and disability benefits.

COVID Leave must be provided to employees in addition to any employer-provided paid leave such as vacation, PTO, and paid sick leave.

Since March 18, 2020, to qualify for COVID leave, an employee's order of quarantine or isolation had to issue from New York State, its Department of Health, a local department of health, or a governmental entity authorized to issue such order. Also, self-imposed isolation or isolation mandated by employers did not necessarily qualify an employee for COVID Leave or other paid leave. However, New York State's January 2021 guidance modifies these requirements and provides additional guidance for employers implementing COVID Leave.

Set forth below are a few of the key distinctions and enhancements to COVID Leave:

- An employee who tests positive for COVID-19 does not need an order of quarantine or isolation to trigger an entitlement to COVID Leave. The positive test is now, in essence, considered the order.
- An employee who tests positive following a mandatory order of quarantine or isolation will be deemed to be subject to a second order of quarantine or isolation and is entitled to receive COVID Leave benefits again. The employee must submit the positive test result to the employer to qualify for a second round of COVID Leave benefits, unless the employer administered the test.
- If an employer restricts an employee from the workplace due to COVID-19 exposure but the employee is not otherwise under an order of quarantine or isolation, the employer must continue to pay the employee until such time the employer permits the employee to return to work. However, if the employee becomes subject to an order of quarantine or isolation while the employee remains away from the workplace, the employee will then be entitled to receive COVID Leave but will no longer be eligible for additional pay from the employer. Pay required to be provided to an employee as a result of an employer requiring the employee to remain out of the workplace is distinct from the COVID Leave requirements
- An employee may only qualify for up to three periods of COVID Leave. However, in order to qualify for a second or third period of COVID Leave, a positive COVID test is required.

The January guidance greatly expands employees' rights to COVID Leave. It is now clear that

employees can avail themselves of this benefit up to three times. In addition, employers who have been instructing employees to remain home based on potential COVID-19 exposure may be required to continue paying employees while they are home if the employees are not under an order of quarantine or isolation from an authorized governmental entity.

Employers should review their COVID operating policies and procedures in light of this clarification from New York State.

Employers should also remember that COVID Leave is job protected leave, which means that employees are entitled to be returned to their same job or a comparable position (same pay, benefits, etc.) upon returning from COVID Leave. Additionally, employers are prohibited from discriminating or retaliating against employees for their use of COVID Leave.

Employers should be careful that they are providing these enhanced benefits in accordance with this updated guidance to their employees who are subject to an order or quarantine, test positive for COVID-19, or are restricted from the workplace by their employers. Employers should also review their COVID Leave policy to make sure it remains compliant with these recent changes.

Please call either of the employment attorneys below for any questions regarding this client alert.

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