

March 2020

Follow @Paul_Hastings



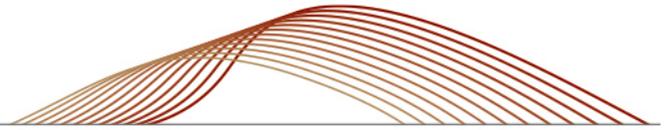
PH COVID-19 Client Alert Series: Details on New York COVID-19 Emergency Legislation

By [Marc Bernstein](#), [Pat Shea](#), [Emily Pidot](#), [Kenneth Gage](#) & [Brian Hayes](#)

On March 18, 2020, Governor Cuomo signed emergency legislation extending job protection and pay for New Yorkers quarantined as a result of COVID-19. See our earlier [client alert](#) for a description of the benefits. In addition, the State has released guidance, which we summarize here.

COVID-19 Quarantine Leave

- COVID-19 quarantine leave applies in cases where an employee is under an order of mandatory or precautionary quarantine or order of isolation. These orders may be issued by the State of New York, the New York State Department of Health, the local Board of Health, or any government entity authorized to issue such order (“COVID-19 Quarantine Order”).
 - Employees are **NOT** eligible for COVID-19 quarantine leave if they are not showing symptoms and are physically able to work through remote access or similar means.
 - Employees are **NOT** eligible for COVID-19 quarantine leave if they are subject to a quarantine because they (1) voluntarily traveled to a country with Level 2 or Level 3 health notice from the CDC, (2) the travel was not at the direction of the employer, (3) employees were provided notice of the travel health notice, and (4) employees knew about this restriction in New York’s new law.
 - Employees are **NOT** eligible for COVID-19 quarantine leave to care for a minor child if the child’s school closes for preventative social distancing (i.e., there is no COVID-19 Quarantine Order).
- Employees do not have to apply for COVID-19 quarantine leave.
- The new law applies **retroactively**. Employees may therefore take COVID-19 quarantine leave if they are still currently under a COVID-19 Quarantine Order, even if that order was issued prior to the enactment of the COVID-19 Quarantine Leave legislation on March 18, 2020.
- While an employee is on COVID-19 quarantine leave, his/her job is protected. Upon returning from the leave, employees are entitled to be restored to the position he/she held prior to taking the leave.



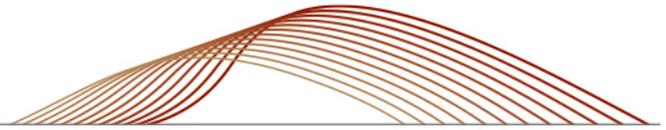
Employer-Provided Paid Sick Leave During COVID-19 Quarantine Leave

- Eligible employees are entitled to varying amounts of paid sick leave depending on their employer's size.¹ Paid sick days must be paid at employees' regular rate of pay.
 - 100 + Employees: 14 paid days
 - 11 to 99 Employees: 5 paid days
 - 10 or Less Employees (2019 net income >\$1 million): 5 paid days
- Eligible employees do not have to apply for paid sick days taken during their COVID-19 quarantine leave.
- Employers cannot require employees to use existing sick leave accruals or other paid time off for a COVID-19 Quarantine Order. Instead, employers that are required to provide paid sick leave under the new law must provide such leave separate from any existing accruals.

COVID-19 Quarantine Leave, New York Paid Family Leave, and Short Term Disability Benefits Claim Procedure

An employee who runs out of paid sick days from his/her employer or works for an employer that is not required to provide paid sick days² may be eligible to receive weekly wages through a combination of New York Paid Family Leave ("NYPFL") and Short-Term Disability ("STD") during the remainder of the quarantine, up to a combined maximum of \$2,884.62 per week.³ There is no waiting period for benefits claimed as a result of a COVID-19 Quarantine Order. Applying for benefits is a multistep process:

1. Employees must complete the Request for Paid Family Leave ("Form PFL-1"). Additionally, depending on the type of leave, they will need to complete either a [Request for COVID-19 Quarantine Leave for Yourself Package](#) or [Request for COVID-19 Quarantine Leave for Minor Child package](#). The application forms are available at PaidFamilyLeave.ny.gov/COVID19 or through the employer's STD and NYPFL insurance carrier. Employees may contact the Paid Family Leave Helpline at (844) 337-6303 for further assistance.
2. Once an employee completes the Employee Sections of the forms, he/she must send them to the employer to complete the Employer Sections. An employer has **3 business days** to complete these sections and return the forms to the employee.
3. After the employee receives the completed forms (or if the employee does not receive the forms within 3 business days), the employee must then submit the completed forms together with the COVID-19 Quarantine Order to the employer's STD and NYPFL insurance carrier. Employees should submit the paperwork within 30 days from the first day taking COVID-19 quarantine leave to avoid losing any benefits.⁴
4. An employer's STD and NYPFL insurance carrier must pay or deny benefits within 18 calendar days of receiving an employee's request for benefits. If more than 18 days elapse without a decision or if the employee's claim is denied, he/she may file a request for arbitration. Arbitration is handled by National Arbitration and Mediation ("NAM"). More information can be found on [NAM's website](#).



Further Information and Resources

Employers and employees may obtain further information by contacting the New York Novel Coronavirus (COVID-19) Hotline at (888) 364-3065 or visiting <https://www.governor.ny.gov/programs/paid-sick-leave-covid-19-impacted-new-yorkers>.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

Marc E. Bernstein
1.212.318.6907
marcbernstein@paulhastings.com

Emily R. Pidot
1.212.318.6279
emilypidot@paulhastings.com

Brian M. Hayes
1.212.318.6822
brianhayes@paulhastings.com

Kenneth W. Gage
1.212.318.6046
kennethgage@paulhastings.com

Patrick W. Shea
1.212.318.6405
patrickshea@paulhastings.com

-
- ¹ Employers that must provide paid sick days are those that, as of January 1, 2020, had (a) more than 100 employees, (b) 11 to 99 employees, and (c) 10 or fewer employees and a net income greater than \$1 million in 2019.
 - ² Employers with fewer than 10 employees as of January 1, 2020, whose income was less than \$1 million dollars in 2019.
 - ³ Paid Family Leave benefits are taxable. While taxes are not automatically withheld from benefits, employees can request voluntary tax withholding.
 - ⁴ An employer's NYPFL and STD carrier may not deny a request for benefits solely because the Employer Sections are not completed.

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2020 Paul Hastings LLP.