

# New York State Implements Sick Leave for Employees Required to Quarantine or Self-Isolate By Government Order

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## The Bottom Line

- *New York's new sick leave law confirms that it is meant to supplement benefits that may be available to certain employees under the federal Families First Coronavirus Response Act (FFCRA), new federal legislation that becomes effective April 1, 2020, as discussed in our prior alert.*
- *It also confirms that benefits under the federal and state laws can run concurrently.*
- *As of now, the new law is not entirely clear as to its interplay with the New York City Earned Sick and Safe Time Act (ESSTA). For the time being, employers should presume that the laws will be interpreted in favor of giving the most generous protections to employees during this pandemic.*

On March 18, 2020 the New York State Legislature passed, and Governor Cuomo signed into law, a mandatory sick leave law benefitting many employees in New York State affected by the COVID-19 crisis. New York's new law sets forth minimum requirements for employers to provide sick leave to, and prescribes specific benefits to, employees who are subject to an order of quarantine or isolation due to COVID-19.

Until now, New York State did not have state-mandated sick leave, nor did the state's existing laws clearly provide for paid family leave, disability benefits or unemployment insurance in situations like those that have arisen during this crisis. The new law, which goes into effect immediately, aims to clarify these points.

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## Mandatory Sick Leave Measures Directed at the COVID-19 Crisis

The law implements protections for employees who the state, the department of health, a local board of health or any other duly authorized governmental entity has ordered into mandatory or precautionary quarantine or isolation, and those employees who have dependent minor children who have been directed to quarantine or isolate. Notably, this suggests that if an employee does not have confirming documentation from the state, or a state or local department of health, or another governmental entity duly authorized to issue such an order, they will not be subject to the protections of this law.

We expect coverage under the existing New York paid family leave and disability laws to extend to those employees who contract COVID-19 or have to take time off to care for covered family members who contract COVID-19. However, this new law only addresses the need for employees to take time off because they or their minor dependent child become subject to a mandatory or precautionary quarantine or isolation order, as described above.

Under the new law, employees of **small businesses** (10 employees or fewer) receive:

- *Unpaid* sick leave until the end of the quarantine/isolation order;

- *Immediate* qualification for paid family leave if they are required to care for a minor dependent child who is ordered to quarantine or isolate; and
- *Immediate* eligibility for temporary disability benefits, payable on the first day of disability, thus bypassing the regular waiting periods for such benefits (if the employee is required to quarantine or self-isolate).

Employees of **medium size employers** (11-99 employees) and **small employers with income of at least \$1 million in 2019** receive: five paid sick days, followed by unpaid sick leave until the quarantine/isolation order ends; after the first five paid days, the employee qualifies immediately for paid family leave and disability benefits, if applicable.

Employees of **large employers** (100 or more employees) and **public entities** (states, cities, towns, school boards, etc.) are entitled to 14 paid sick days.

Disability and paid family leave benefits may be paid concurrently to an eligible employee, but an employee may not collect any benefits that would exceed \$840.70 in paid family leave or \$2,043.92 in disability per week.

Unlike other sick leave laws, the new New York law provides *full job protection* to employees during the period of their absence. Moreover, employees cannot be terminated, demoted or subject to retaliation because they request or use sick leave under the law.

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## Exclusions Based on Risky Behavior or Ability to Continue to Work Remotely

The paid leave aspects of the law do not apply to employees who:

1. Choose to travel abroad to countries subject to a CDC level two or level three travel health notice if the travel is not for work and the employee is notified in advance of the travel health notice and the effect such travel would have on the employee's rights under the law (such employees remain protected, however, by the unpaid leave provisions of the law); or
2. Are asymptomatic or have not yet been diagnosed with any condition, and are able to continue working while quarantined or isolated.

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## Related People

### Jessica Golden Cortes

Partner

212 468 4808

[jcortes@dglaw.com](mailto:jcortes@dglaw.com)

### David S. Greenberg

Counsel

212 468 4895

[dgreenberg@dglaw.com](mailto:dgreenberg@dglaw.com)