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New York Legislation Provides Employees with Paid Leave for COVID-19 Vaccinations

Update

Governor Andrew Cuomo signed the legislation described in this Alert on March 12, 2021.

New York's Legislature recently passed a bill, which, if signed into law by Governor Andrew Cuomo, would temporarily amend the New York Labor Law to require New York employers to provide employees with up to four hours of paid leave per injection to receive the COVID-19 vaccination. Since the four-hour leave is *per injection*, employers will have to provide up to eight hours of paid leave for two-dose vaccination regimens, such as those being manufactured by Pfizer and Moderna. It is also possible that additional paid leave time will be needed if vaccine "booster" shots are required in the future.

Any such "vaccine leave" must be paid at the employee's regular rate of pay and is in addition to (and cannot be charged against) any other leave to which an employee may be entitled, including under the State's recently-enacted mandatory [paid sick leave law](#). However, the provisions of this vaccine leave law may be waived in a collective bargaining agreement provided it explicitly references the law.

The legislation includes a non-retaliation provision prohibiting employers from taking any adverse action against an employee for exercising their rights under the law.

This new employee leave benefit will be temporary, as the vaccine leave law as drafted is set to expire on December 31, 2022.

A Growing Trend

Even in the absence of such legislation, some employers have already implemented policies and procedures compensating employees for time spent receiving the COVID-19 vaccine. As just one of numerous recently reported examples, Marriott International announced that employees in the

The Bottom Line

The New York Legislature recently passed a bill, which if signed into law, will temporarily require employers to provide employees with up to four hours of paid leave per injection to receive the COVID-19 vaccine.

Employers should prepare to update their policies and procedures in anticipation of this pending legislation becoming law.

U.S. and Canada will receive the equivalent of four hours of pay upon completion of the vaccination. Marriot stated that it is “strongly encouraging” but not mandating that employees at its managed properties get vaccinated.

Other states, such as [Illinois](#), are beginning to issue guidance to employers on how to handle certain employee time-off and compensation issues relating to the vaccine. This trend is expected to continue in the coming months as the vaccine becomes more widely available.

For a general overview of federal Equal Employment Opportunity Commission guidance on COVID-19 vaccinations in the workplace, including guidance addressing whether such vaccines can be mandated by employers, please see [our prior alert](#).

Practical Implications

As this pending legislation will become effective immediately upon New York’s Governor signing it into law (which is something he is widely expected to do soon), employers should prepare to update their policies and procedures to account for the new legislation. Employers with a unionized workforce may wish to specifically consider whether obtaining a waiver to this law is an advisable and viable option.

The legislation is generally sparse and leaves open numerous questions, including whether employees may be required to provide advance notice of their intent to take vaccine leave and whether employers may require employees to produce proof that they actually used the leave for its intended purpose.

It is also unclear at this time if or when the New York State Department of Labor may issue further clarifying guidance.

For More Information

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