

**Davis & Gilbert**  
*ADVANTAGE*

## New York State **Paid Sick Leave FAQ**

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INFORMATION**

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On March 18, 2020, New York State enacted a mandatory sick leave law, which benefits employees affected by the COVID-19 crisis. Davis & Gilbert partner **Gregg Brochin** provides clarification on employers' obligations under this new paid sick leave law. If you have any additional questions on New York State paid sick leave law or any other labor and employment issues, please contact Gregg Brochin or the D&G attorney with whom you have regular contact.

**Q: As an employer, when do I have to provide paid sick leave under New York State law?**

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**A:** Paid New York State sick leave is only required for employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the New York Department of Health, a local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.

**Q: Does the law apply to employees who are not able to work because:**

- 1. their place of business is closed;**
  - 2. a health care provider ordered them to isolate or quarantine;**
  - 3. their child is subject to a quarantine order,**
  - 4. they do not want to go to work out of fear that they may contract COVID-19;**
  - 5. their child's school is closed; or**
  - 6. they have COVID-19 symptoms?**
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**A:** No, unless they are also subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the New York Department of Health, a local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.

### **Q: Are employees who are able to work remotely while subject to an order of quarantine eligible for leave under the New York State paid sick leave law?**

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**A:** No. An employee who is subject to a quarantine order, who is asymptomatic or has not yet been diagnosed with any medical condition, and who is physically able to work whether through remote access or other similar means, is not eligible for paid New York State sick leave.

### **Q: How much paid sick leave do I have to provide?**

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**A:** It depends on the size of the company.

- >> Companies with 10 or fewer employees as of January 1, 2020, that had a net annual income less than \$1 million last year, are not required to provide any **paid** leave but must provide leave for the duration of the order of quarantine or isolation. Their employees can apply for benefits through the employer's short-term disability/paid family leave carrier during the leave.
- >> Companies with 11-99 employees as of January 1, 2020, and smaller employers (1-10 employees) that had a net annual income greater than \$1 million last year, must provide leave for the duration of the order of quarantine or isolation and must pay the employee for five of those days as paid sick leave. Their employees can apply for benefits through the employer's short-term disability/paid family leave carrier with respect to the otherwise unpaid leave.
- >> Companies with 100 or more employees as of January 1, 2020 must provide leave for the duration of the order of quarantine or isolation and must pay the employee what the employee would have otherwise received during the 14 calendar days of the order.

### **Q: Can an employer require that employees use their existing sick leave accruals or other accrued paid time off for a COVID-19 quarantine order?**

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**A:** No. Employers who are required to provide paid sick leave under New York State law must provide that leave separate from any other accrued paid time off.

### **Q: Is leave due to a quarantine leave “job protected”?**

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**A:** An employer cannot terminate or take any other adverse action against an employee because that employee takes leave pursuant to the New York State paid sick leave law. Employees on such a leave are generally entitled to be restored to the position they held prior to taking leave. However, the law does not prohibit any personnel action that otherwise would have been taken regardless of any request to use, or use of, any leave.

**Q: Do employees need a quarantine or isolation order specifically issued to them?**

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**A:** Not necessarily. Several health departments have issued blanket orders that may entitle employees to paid sick leave without an order being issued specifically to them. For example, the New York City Department of Health has issued an order stating that people who meet certain conditions, complete a certification and provide documentation showing that the isolation is, or was, necessary are deemed to have been ordered to isolate for purposes of the paid sick leave law. The order, with the required certifications, can be found [here](#).

Similarly, the Westchester County Board of Health has issued a standing order stating that any person who has tested positive for COVID-19 through laboratory testing is required to remain isolated at the individual's place of residence until that individual has met the clearance criteria, as set forth by the New York State Department of Health. Although this order does not reference the New York State Paid Sick Leave law, if a Westchester resident provides proof of a positive COVID-19 test, they are deemed to be subject to an isolation order and, therefore, eligible sick leave under New York law.