New York State to Pass New Emergency Paid Leave for COVID-19 and Permanent Paid Sick Leave

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Today, March 18, 2020 the New York State Legislature will pass, and the Governor is expected to sign, a bill that adopts two separate and distinct sick leave programs:

- A provision that provides paid time off for employees impacted by the COVID-19 virus (effective upon the Governor’s signature); and
- A new, permanent law requiring all employers to provide sick leave to their employees (effective January 1, 2021).

Paid Time Off for Employees Impacted by the COVID-19 Virus (State)

In the event of a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, a local board of health, or any government entity duly authorized to issue such an order due to COVID-19:

Employers of 99 or less will be obligated to:
  - Notify employees of the availability of leave as described below;
  - Provide job protected leave as described below;
  - Provide documents required for that employee to apply for Paid Family Leave (PFL) and New York State Short Term Disability (DBL).

Employers of 100 or more only need to provide paid sick leave as required (see below).

Available Leave According to Number of Employees:

Employers of 10 or fewer as of January 1, 2020:
  - Must provide unpaid sick time during an employee’s period of ordered quarantine or isolation, except those employers with net income of more than $1 million, which must provide five days of paid sick leave.

Employers of 11 to 99 as of January 1, 2020:
  - Must provide at least five days of paid sick leave.

Employers of 100 or more as of January 1, 2020:
  - Must provide at least fourteen days of paid sick leave.

Public employers:
  - Must provide at least fourteen days of paid sick leave.
**Other Provisions**

Benefits would not be available to employees deemed asymptomatic or not yet diagnosed with any medical condition and is physically able to work, through remote access or other means.

This leave is job protected; however, employees are not eligible to use this leave if the employee is returning from personal travel to one of the destinations on the CDC travel advisory list. These employees would be able to use any available employer provided leave time or, absent that, unpaid sick leave for the duration of the quarantine.

**Paid Family Leave and Disability (State)**

*For employers of 99 employees or less,* should an employee’s period of quarantine or isolation extend beyond available sick time as described above, the employee would be able to apply for Paid Family Leave (PFL) and New York State Short Term Disability (DBL) concurrently – which is not possible under current law. Benefit amounts would be a combination of payments from PFL and from DBL up to 100% of an employee’s average weekly wage for those employees earning up to $150,000 per year.

For example:

An employee making $150,000 per year ($2,884.62 per week) may be eligible for:

- $840.70 payment from PFL (60% of average weekly wage to the 2020 maximum benefit amount), and
- $2,043.92 payment from DBL (a significant – temporary increase over the current maximum of $170/wk.)

Additionally, there is no waiting period for the commencement of DBL payments under these circumstances. PFL benefits may also be used to care for a dependent minor child under such a mandatory quarantine of isolation order; this provision does not apply in cases where the child’s school is closed and requires daycare.

The law also provides for the creation of a risk adjustment pool to help stabilize the DBL/PFL insurance carrier industry. And, if federal COVID-19 benefits are approved, these state benefits would only apply if they would provide employee benefits in excess of what is available under federal law.

**Federal**

*As of this writing,* Congress is also considering legislation that may expand the Family and Medical Leave Act and/or require paid sick days during the COVID-19 crisis. A plan has already passed the House.

**Permanent Paid Sick Leave (Effective January 1, 2021)**

The second component of this bill is a new, permanent employer mandate to provide job protected sick leave. These provisions include:

- Employees are to accrue sick leave at a rate of one hour per thirty hours worked;
- **Employers of less than five employees** must provide up to forty hours of unpaid sick leave in a calendar year, except those with net income of more than $1 million, which must provide up to forty hours of paid sick leave;
- **Employers of 11 to 99** must provide forty hours of paid sick leave each calendar year;
- **Employers of 100 or more** must provide fifty-six hours of paid sick leave each year.
Eligible Uses of Paid Sick Time

Eligible uses are for care for the employee’s own mental or physical illness, injury, or health condition or of the employee’s “family member;” for diagnosis or care of medical issues; or for absences related to domestic violence, sexual offenses, stalking and/or human trafficking.

“Family member” is defined as an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, and the child or parent of an employee’s spouse or domestic partner. Sick time can be used “upon oral or written request of an employee.” Employers can set reasonable minimum increments of use, not to exceed four hours. Unused sick leave may be carried over into the following calendar year. Employers can limit the use of sick leave to forty hours (employers of less than one hundred) or fifty-six hours per year (employers of one hundred or more).

Employers are prohibited from discriminating against or taking any retaliatory action against any employee exercising their rights under this law.

Employers with leave policies that encompass the amount of sick time required under this statute are not required to provide additional sick time as long as sick time may be used in the same way as proscribed in the statute.

Recordkeeping

Upon request, employers are required to provide employees with a summary of their sick leave accrued and used in the current and previous calendar.

The bill preempts all municipal sick leave ordinances other than New York City, and employers must maintain six years of records on sick leave provided to all employers.

As you can see, there is plenty of activity on both the state and federal levels aimed at protecting the income of employees impacted by the Coronavirus. NYFB will keep its members informed of these and any other relevant changes as they occur.