One of the bigger questions with the Emergency Paid Sick Leave Act is an employer having to pay for leave because “the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19”. Does that apply when the business itself is shut-down by the government, but the employee is free to go wherever he/she wants? The Congressional Research Service Report prepared for the members and committees of Congress may be instructive. As noted in the report-

Quarantine typically refers to the “separation of individuals who have been exposed to an infection but are not yet ill from others who have not been exposed to the transmissible infection.” In contrast, isolation refers to the “separation of infected individuals from those who are not infected.”

It appears that quarantine and isolation, as defined in law and jurisprudence, involve orders affecting individuals, and not the shut-down of businesses. Courts have set four limits on isolation and quarantine authority: (1) the subject must actually be infectious or have been exposed to infectious disease; (2) the subject must be placed in a safe and habitable environment; (3) the authority must be exercised in a non-discriminatory manner; and (4) there must be procedural due
Unfortunately, interpretations of these new paid leave laws may be litigated for years. However, until and if the government issues a Stay-In-Place Order, I believe there is an argument that the shut-down of a particular business does not qualify under the Paid Sick Leave Law. This may not be the most popular argument, but I imagine it will be made many times in the years ahead.

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