New York Adopts Sweeping Paid Sick Leave Law

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Moving quickly to respond to the coronavirus outbreak, New York adopted sweeping legislation providing for paid and unpaid sick leave to all New York employees.

While the information contained in this material provides a general overview of the law, each employer will likely face unique business and employment related challenges and issues as they relate to these changes. Therefore, employers are encouraged to seek competent legal counsel when responding to employee inquiries or considering changes to business operations as a result of the coronavirus to ensure compliance with the law.

The new Sick Leave Law became effective immediately and provides for paid and unpaid sick leave for employees ordered to quarantine or isolate because of COVID-19. The sick leave would be in addition to any paid leave provisions offered by the covered employer. The amount of leave, whether paid or unpaid, and additional benefits are dependent on the size and financial status of the employer.
Employees are eligible for the leave if employee has been subject to an order of quarantine or isolation issued by the State of New York, Department of Health, local board of health, or any government entity having authority to issue an order due to COVID-19. Employees are not eligible for paid leave or benefits, however, if the employee’s isolation or quarantine was because of non-business travel to a Level 2 or Level 3 country (as designated by the Center for Disease Control and Prevention) and the employee had notice of the travel restriction before going. Seemingly, these employees are still eligible for unpaid leave as the law states that such an employee may use accrued leave or, if the employee does not have accrued leave, unpaid leave. Employees are also not eligible for leave if the employee is asymptomatic or has not been diagnosed with any medical condition and is physically able to work either remotely or otherwise. Employees eligible for paid or unpaid leave are entitled to reinstatement once the isolation or quarantine is over. Interestingly, the law does not expressly exempt the reinstatement obligation in the event of job reductions due to economic circumstances.

The new law provides that in the event the federal government adopts a sick leave law which provides for the same or greater benefits, then the federal benefits will prevail, and the state benefits will be supplemental benefits only. On March 18, 2020, President Trump signed into law the Families First Coronavirus Response Act which will become effective on April 2, 2020.

In addition to providing paid and unpaid leave for persons subject to quarantine or isolation, effective 180 days after passage, employees shall be entitled to earn paid sick leave at the rate of one hour of leave for every 30 hours of work (like New York City’s Safe and Sick Time Law). Once again, the amount of leave and whether paid or unpaid depends on the size and financial status of the employer.
As of January 1, 2021, employees may use sick leave for the following:

- For mental and physical illness, injury, or health condition of the employee or the employee’s family member regardless of whether the illness, injury or health condition has been diagnosed or requires medical care;
- For the diagnosis, care or treatment of a mental or physical health condition of the employee or the employee’s family member;
- For an absence from work due to domestic violence for such employee or employee’s family member to obtain services.

The term “family member” is defined broadly to include the employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of the employee’s spouse or domestic partner. An employer may set a reasonable minimum amount of leave to be taken not to exceed 4 hours.

An employer which adopts a paid sick leave provision equal to or greater than the leave provided under the Act need not provide any additional leave.

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<table>
<thead>
<tr>
<th>Employer Type; Number of Employees</th>
<th>Sick Leave</th>
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<tbody>
<tr>
<td>Four or fewer Employees, less than $1 million net income in prior calendar year</td>
<td>Up to 40 hours of <em>unpaid</em> sick leave</td>
</tr>
<tr>
<td>Four or fewer Employees, more than $1 million net income in prior calendar year</td>
<td>Up to 40 hours of paid sick leave</td>
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<tr>
<td>Between 5 and 99 Employees</td>
<td>Up to 40 hours of paid sick leave</td>
</tr>
<tr>
<td>100 or more Employees</td>
<td>Up to 56 hours of paid sick leave</td>
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