Monday, March 23, 2020

As we have discussed, there are notable gaps in the recently passed Federal Emergency Paid Sick Leave Act, including exemptions for employers with under 50 and over 500 employees. Accordingly, some states have been working to address those gaps. For example, New York State enacted a paid sick leave law on Wednesday, March 18, 2020, that extends required paid sick leave to employers of all sizes.

Instead of exempting employers with under 50 and over 500 employees, the New York law takes the size of employers into account only with respect to the amount of sick leave provided. However, New York’s new law notably only covers employees who are subject to mandatory or precautionary orders of quarantine or isolation by the state Department of Health, local boards of health, or any governmental entity duly authorized to issue such an order. This means that isolation or quarantine required by employers or as a product of an employee’s self-quarantine do not meet New York’s requirements, whereas the federal law covers employees who are experiencing coronavirus symptoms and seeking a diagnosis, as well as those caring...
for an individual under quarantine.

The amount of paid sick leave afforded employees in New York State differs based on the employer size as follows:

- Small employers with 10 or fewer employees (and net income less than $1 million) are required to provide unpaid sick leave, but those employees will become immediately eligible for Paid Family Leave and Temporary Disability Insurance (TDI) benefits.
- Small employers with 10 or fewer employees and net income greater than $1 million are required to provide five days of paid sick leave and unpaid leave until termination of quarantine or isolation, with employees immediately eligible for Paid Family Leave and Temporary Disability Insurance (TDI) benefits after the five days of paid sick leave.
- Medium-sized employers with between 11 and 99 employees, regardless of net income, must provide five days of paid sick leave and unpaid leave until termination of quarantine or isolation, with employees immediately eligible for Paid Family Leave and Temporary Disability Insurance (TDI) benefits after receiving the paid sick leave.
- Employers with 100 or more employees must provide a minimum of 14 days of paid sick leave.

For large and small employers outside New York, the question now becomes, will my state follow New York’s lead? If the federal law does not currently apply to my business, will my state take action to change that?

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