

An Employer's Obligations to Employees with COVID-19 under New York's Paid Sick Leave Law

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New York's Paid Sick Leave Law generally requires employers to provide their employees with sick leave after testing positive for COVID-19. At the beginning of the pandemic, employers were required to provide such leave only if the employee was subject to a mandatory or precautionary order of COVID-19 quarantine or isolation or, alternatively, after receiving a certification of the employee's treating healthcare provider stating same.

Now, in addition to those two other avenues, employers must provide sick leave to employees if the employee provides an "Affirmation of Quarantine" or an "Affirmation of Isolation." Those self-attestation forms may be used for sick leave claims "as if it was an individual Order for [Quarantine or Isolation] issued by the New York State Department of Health or relevant County's Commissioner of Health or designee."

The amount of COVID-19 sick leave depends on the employer itself:

- Employers with 10 or fewer employees¹ and net income of less than \$1 million for the prior year, the employer must provide employees with guaranteed job protection with unpaid COVID-19 sick leave for the duration of the quarantine order.
- Employers with 10 or fewer employees and net income greater than \$1 million for the prior year, the employer must provide employees with at least 5 days of COVID-19 paid sick leave and guaranteed job protection for the duration of the quarantine order.
- Employers with 11-99 employees and regardless of income level must provide their employees with at least 5 days of COVID-19 paid sick leave and guaranteed job protection for the duration of the quarantine order.
- Employers with 100 or more employees must provide their employees with guaranteed job protection for the duration of the quarantine order and at least 14 days of COVID-19 paid sick leave during the order of quarantine.

The employer must provide the applicable amount of sick leave per calendar year. For purposes of use and accrual of leave, employers may set a calendar year to mean any 12-month period.

Lastly, employers need not provide leave to employees quarantined who are able to work from home. Nor do employers need to provide leave if the employer has a generous PTO policy.

Takeaway: Employers in New York must stay on top of sick leave requests, especially ones from employees testing positive for COVID-19.

^[1] Although the amount of sick leave is premised on employer size, the statute itself does not clarify whether out-of-state employees are included in the headcount. The New York State Department of Labor recently finalized regulations on the Paid Sick Leave Law, which provided commentary about counting employees: "While not addressed in this rulemaking, for the purpose of determining an employer's number of employees, the Department interprets the statute to include all employees of the employer nationwide. However, the state's

requirement for sick leave applies only to employees in New York State.” See Commentary to 12 N.Y.C.R.R. § 196-1.4. This commentary will likely require court interpretation to discern the true meaning of counting employees for sick leave.

Attorneys

- Tracy Armstrong
- Nicholas Rollo

Practice

- Employment Law