

FAQ'S ON NEW YORK COVID-19 LEAVE LAW

New York Governor Andrew Cuomo signed New York's COVID-19 Leave Law (the "NY Law") on March 18, 2020, and it became effective immediately.

General Information

- **What employers are required to comply with the NY Law?**

All employers in New York State. However, there are different requirements for employers based on the number of employees each employer had as of January 1, 2020.

- **Is an employee who can work from home eligible for benefits under the NY Law?**

Most likely, no. If an employee is deemed asymptomatic or has not been diagnosed with any medical condition and is physically able to work from home, then the employer does not have to provide mandatory sick leave.

- **What leave requirements do employers have to comply with under the NY Law?**

Employers with 100 or More Employees

Employers with 100 or more employees as of January 1, 2020 must provide an employee at least **14 days of paid sick leave** during any mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19. While not explicitly stated in the law, after the 14 days of paid sick leave, the employee is also eligible for paid family leave benefits and disability benefits during the order of quarantine/isolation.

Employers with 11-99 Employees/Employers with 10 or Fewer Employees and Net Income Greater than One Million Dollars

Employers that as of January 1, 2020 had (i) 11 to 99 employees **or** (ii) 10 or fewer employees and a net income of greater than one million dollars in the previous tax year must provide an employee **5 days of paid sick leave and unpaid leave for the remaining duration** under the same circumstance. After the 5 days of paid sick leave, the employee is also eligible for paid family leave benefits, disability benefits, as well as any other benefits provided by law during the order of quarantine/isolation.

Employers with 10 or Fewer Employees (and Not Meeting Net Income Threshold)

Employers with 10 or fewer employees as of January 1, 2020 and who do not meet the net income threshold above must provide **unpaid sick leave to an employee** under the same circumstance and are immediately eligible for paid family leave benefits, disability benefits, as well as any other benefits provided by law during the order of quarantine/isolation.

- **Are all employees eligible for paid sick leave under the NY Law, including part-time employees?**

Yes. There is no provision limiting employee eligibility under this law.

- **Are certain employees disqualified from receiving paid sick leave under the NY Law?**

Yes. Employers are not required to provide this mandatory sick leave for any employee who is subject to an order of quarantine/isolation because (1) the employee traveled to a country with a CDC level two or three travel health notice, (2) the travel was not taken for business or at the direction of the employer, (3) the employee had notice of the travel health notice prior to travel, and (4) the employee had notice of this exception prior to travel. An employer does not have to provide any paid sick leave pursuant to this law if the employee satisfies all the above criteria. Even if the employee does not qualify for mandatory paid sick leave due to this exception, however, the employee can still use his or her own normal accrued leave or unpaid sick leave.

- **Can an employer require an employee to exhaust his/her other employer-provided accrued paid leave before using the mandatory paid sick time?**

No. When providing the mandatory paid sick leave under the NY Law, the employer cannot require an employee to exhaust any other accrued sick leave or paid leave.

- **What happens after an employee returns from an order of quarantine/isolation?**

The employer must restore the employee to the position of employment held prior to the order of quarantine/isolation, with the same pay and terms of employment. An employer cannot discharge, threaten, penalize, discriminate against, or retaliate against any employee who takes paid sick leave under this law.

- **Does the New York law have a current end date?**

No. The law does not establish a set date where New York employers no longer have to comply with its provisions.

New York Paid Family Leave and Disability Benefits

- **Under what circumstances is an employee entitled to New York paid family leave benefits and disability benefits under this law?**

For purposes of this law only, an employee is entitled to paid family leave: (i) when an employee is subject to a mandatory or precautionary quarantine or isolation order; or (ii) to provide care for a child who is subject to a mandatory or precautionary quarantine or isolation order.

For purposes of this law only, an employee is entitled to disability benefits when: (i) he/she is unable to perform his/her regular work duties because of a mandatory or precautionary quarantine or isolation order; and (ii) he/she has exhausted all paid sick leave provided under this law.

- **Is there a cap to the New York paid family leave benefits and disability benefits under this law?**

Yes. An employee cannot be paid more than \$840.70 in paid family leave per week nor can an employee be paid more than \$2,043.92 in disability benefits per week.

- **Do the New York paid family leave benefits and disability benefits under this law run concurrently?**

Yes. Under the NY Law, paid family leave and disability benefits may be payable concurrently to an employee beginning the first full day of unpaid leave due to mandatory or precautionary quarantine.

Coordination Between the NY Law and the New Federal Paid Leave Law

- **Are employers required to comply with the NY Law as well as the federal Families First Coronavirus Response Act?**

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (the “CRA”) into law to address the COVID-19 pandemic. With respect to paid sick time, the CRA, which applies to employers with fewer than 500 employees, provides up to 80 hours of paid sick time for employees subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

The CRA does not become effective until April 2, 2020, fifteen days after it was signed. Until that date, employers will have to fully comply with the NY Law, which took effect immediately. After April 2, 2020, the practical implications of the CRA on compliance with the NY Law largely depend on the size of an employer.

Because the CRA does not apply to employers with 500 or more employees, ALL such employers MUST comply with the NY Law.

Employers with **fewer than 500 employees** are **NOT** required to provide benefits under the NY Law **if** the CRA provides sick leave and/or employee benefits related to COVID-19 that are **equal to or greater than** those under the NY Law.

NY Law Paid Sick Leave

Employers with 100 to 499 Employees: Under both the CRA and the NY Law, employers with 100 to 499 employees must provide **the equivalent of 2 weeks of paid sick leave** to employees subject to a mandatory or precautionary quarantine or isolation order due to COVID-19. (In the absence of regulations to the contrary, we interpret the requirement under the CRA that employers provide “up to 80 hours of paid sick time” as functionally the same as the NY Law requirement that such employers provide “at least 14 days of paid sick leave.”)

Employers with 11-99 Employees/Employers with 10 or Fewer Employees, But Net Income Greater Than One Million: Until April 2, 2020, employers in these categories must provide 5 days of paid sick leave to employees for qualifying reasons (complying with the NY Law). After April 2, 2020, these employers will only have to comply with the more generous paid sick leave requirement of up to 80 hours under the CRA.

Employers with 10 or Fewer Employees Who Do Not Meet the Net Income Threshold

Until April 2, 2020, employers in this category must provide unpaid sick leave to employees (complying with the NY Law). After April 2, 2020, these employers will only have to comply with the more generous paid sick leave requirement of up to 80 hours under the CRA.

Family Leave

The paid family leave and disability provisions of the NY Law do not overlap with the amendments to the Family Medical Leave Act (FMLA) under the CRA. Please refer to our website (www.ohaganmeyer.com) for an update on the details of the CRA.