

March 27, 2020

New York State Issues Guidance Concerning the State-Mandated COVID-19 Sick Leave

On March 25, 2020 New York State issued guidance in the form of answers to frequently asked questions concerning the recently enacted New York Paid Sick Leave Law concerning COVID-19. This guidance concerns only the portion of the law responding to COVID-19, and not the more general paid sick leave benefits taking effect later this year. In addition, it should be noted that the portions of New York Paid Sick Leave law concerning COVID-19 do not apply at the same time as the federal Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act, which take effect on April 1, 2020 for virtually all employers with fewer than 500 employees.

Leave Covered by the New York Paid Sick Leave Law

The guidance confirms that employees are not eligible for the benefits under this law if they quarantine or isolate voluntarily: state-law benefits are available only if quarantine or isolation is pursuant to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, New York State Department of Health, Local Board of Health or any government entity authorized to issue such order. For purposes of this advisory, those entities will be referred to as “Government Authorities.”

The text of the New York statute did not clearly address the situation of employees who were not sick or under quarantine orders themselves, but were unable to work because of childcare responsibilities following a school closure. The guidance clarifies that school closures due to a mandatory or precautionary order of quarantine or isolation issued by a Government Authority may allow employees with children who attend those schools to receive statutory paid family leave. However, employees with children whose schools are closed to practice preventative social distancing are not eligible for these benefits. It should be noted that Governor Cuomo’s Executive Order 202.4, dated March 16, 2020, directed all schools in the state to be closed starting not later than March 18, and continuing through April 1, with an assessment of whether to continue these closures to follow. Individual schools within the state may have closed previously pursuant to directions from Government Authorities that were narrower in scope.

747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.collazokeil.com

Employees who are under a mandatory or precautionary order of quarantine or isolation issued by a Government Authority, and who are unable to work from home, may be eligible for disability and Paid Sick Leave benefits under this law because of their own COVID-19 symptoms or possible carrier status. These employees must use their statutory paid sick leave first and then may apply for Paid Family and disability benefits for the remainder of the quarantine. Employees may also use accrued sick time provided by their employer, but such benefits do not overlap with the paid sick leave guaranteed by New York state in response to COVID-19: the guidance is clear that “Employers required to provide paid sick leave must provide that leave separate from any accruals.” It should be recalled that employees are not eligible for disability and Paid Family Leave under this statute if they are not showing symptoms and are physically able to work remotely.

Providing Employees with Leave

Employees do not have to apply for paid sick days if their employer is required to offer them, but should continue to follow the employer’s regular call-in procedures. However, employees who have exhausted their statutory sick leave and remain unable to work will be required to submit applications if they wish to receive Paid Family Leave and disability benefits. To apply, the employee is required to notify their employer and submit their completed request to their employer’s insurance carrier no later than 30 days from their first day of leave. Forms may be available from the employer’s insurance carrier, and are also available at PaidFamilyLeave.ny.gov/COVID19.

Employers are responsible for completing and returning Part B of the Request Form for Paid Family Leave and either section 3 of the request for COVID-19 Quarantine DB/PFL or section 4 of the Request for COVID-19 Quarantine PFL-child, depending on the type of leave the employee is requesting. The employer must complete and return these sections to the employee within three business days.

Paying Employees Under This Law

Employers should provide the leave payments required by this law in the paycheck for the applicable pay period for the leave.

Paid Work Days or Calendar Days Clarified

The statute provides different amounts of paid sick leave depending on the employer's size and fiscal resources. The 5 and 14-day periods described in the New York Paid Sick Leave Law refer to calendar days, not work days. As a result, the pay an employee is entitled to receive under this leave should represent the amount of money the employee would have otherwise received for the respective 5 or 14-day period.

Rate of Pay Guidance

Employers are required to pay an employee the amount the employee would have otherwise received had they continued to work for that period based on the amount that employee was scheduled or would have been scheduled to work had operations continued normally. Employees that work a fixed schedule or receive a salary should continue to receive pay for the applicable period. Employers should determine pay for hourly, part-time, commissioned salespeople, and other employees who are not paid a fixed wage by looking to a representative period of time to set the employee's average daily pay rate.

Further, employers should pay part-time employees for the number of hours and days during the 5 or 14 day-period that they would have otherwise worked had the employers' operations continued.

Other Considerations For Employers

Employers cannot require employees to use existing sick leave accruals or other paid time off during a COVID-19 quarantine order. Employers required to provide paid sick leave under this law must provide it separately from other accrued paid time off.

Additionally, employers must allow employees to take quarantine leave under this law even if the proper entity issued a quarantine order prior to the enactment of New York Paid Sick Leave Law concerning COVID-19.

If you have any questions about this legislation or would like additional information, please contact John Keil at (212) 758-7862 or jkeil@collazokeil.com, or any other attorney at the firm.

This Advisory is intended for informational purposes only and should not be considered legal advice. If you have any questions about anything contained in this Advisory, please contact Collazo & Keil LLP. All rights reserved. Attorney Advertising.