

New York State Legislature Considering Coronavirus Response Bill Including Paid Sick Time and Other Statutory Benefits

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On March 17, 2020, New York Governor Andrew Cuomo announced a three-way agreement with Assembly Speaker Carl Heastie and Senate Majority Leader Andrea Stewart Cousins in response to the Coronavirus outbreak. As summarized below, the [proposed bill](#) would immediately provide employees with sick leave and job protection in the event they have to stay home due to a quarantine order. The bill would also expand New York Paid Family Leave and New York statutory disability benefits to provide an additional measure of salary continuation during such periods to certain qualifying employees.

Quarantine-Related Sick Leave

Under the bill, New York employers would be required to provide job-protected sick leave to employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, state or local health department, or any other governmental entity due to COVID-19, as follows:

1. Employers with 10 or fewer employees and a net income less than \$1 million in the previous tax year would be required to provide **unpaid, job-protected sick leave** to each employee who is subject to such an order through the termination date of the order. Employees would also be eligible for New York Paid Family Leave benefits and New York statutory disability during the quarantine period as discussed further below.
2. Employers with 10 or fewer employees and a net income greater than \$1 million dollars in the

previous tax year, as well as employers with 11-99 employees, would be required to provide at least **5 days of job-protected paid sick leave**, followed by unpaid leave thereafter until the termination of the quarantine order. After these five days of paid sick leave, employees would be eligible for Paid Family Leave benefits and New York statutory disability for the remainder of the quarantine period as discussed further below.

3. Employers with 100 or more employees as of January 1, 2020, as well as certain public employers (as defined in the bill) regardless of size, would be required to provide at least **14 days of job-protected paid sick leave** during the period of the order.

Employers would be required to provide this quarantine-related sick leave in addition to any sick leave an employee has already accrued. Employers would also be required to restore employees to positions they held prior to their leave, with the same pay and other terms and conditions of employment, and would be prohibited from discriminating or retaliating against employees for taking such leave.

Notably, employees who are asymptomatic or not diagnosed with any medical condition while in quarantine and who are physically capable of working while under the quarantine order, whether remotely or through other means, would not be eligible to use the bank of sick leave made available under the bill. In addition, employees would not be eligible for the paid sick leave or other statutory benefits described above if they are under a mandatory or precautionary quarantine order due to returning to the US after non-business travel to a country which the CDC has issued a level two or three Coronavirus-related travel advisory, so long as the employee was provided notice of the travel advisory and these limitations on benefits prior to such travel. Employees returning from such travel would be able to use any accrued employer-provided leave during their quarantine period, or if no such leave is available to them, unpaid sick leave for the duration of the quarantine period.

Paid Family Leave and Disability Benefits During the Quarantine Period

Under the proposed bill, New York Paid Family Leave benefits would be available to employees falling under groups 1 and 2 above during an otherwise unpaid period of leave taken by an employee due to a covered mandatory or precautionary order of quarantine or isolation, or to provide care for a minor dependent child of the employee who is subject to such an order (following the use of any paid sick leave benefits as set forth above). Paid family leave benefits would be available in the amount otherwise provided under the law (presently, 60% of the employee's average weekly wage), capped at \$840.70 per week.

New York state disability benefits also would be concurrently available to employees falling under groups 1 and 2 as of the first unpaid day of a period of leave where the employee is, as a result of a quarantine or isolation order, unable to perform the regular duties of their employment or the duties of any other employment which an employer may offer. Such weekly benefit would be the difference between the maximum weekly paid family leave benefit (discussed above) and the employee's total average weekly wage, up to a maximum disability benefit of \$2,043.92 per week.

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The proposed bill states that if the federal government ultimately enacts Coronavirus-related sick leave legislation, then the benefits provided under this bill would only remain available to the extent this state law would provide benefits in excess of what the federal legislation would provide. In that

case, employees would be eligible to receive the difference between what the federal legislation would provide and what would be available under this law.

In addition to benefits targeted at the Coronavirus outbreak, the proposed legislation would also adopt Governor Cuomo's broader paid sick leave proposal (previously included as part of his FY 2021 Executive Budget) which would provide New York employees with safe and sick leave for general medical, family care, and domestic violence-related purposes starting January 1, 2021. We will report back with further details on these broader provisions should they ultimately be enacted into law.

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National Law Review, Volume X, Number 78

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