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Amicus Newsletter:

THIS NEWSLETTER FOCUSES ON:

WHAT EMPLOYERS AND EMPLOYEES NEED TO KNOW ABOUT NEW YORK'S MANDATORY PAID SICK LEAVE ACT TO ADDRESS COVID-19

New York's Paid Sick Leave Act

On March 18, 2020 New York State passed a bill mandating paid sick leave for employees. The bill includes various benefits to protect employees from lost time due to the spread of COVID-19.

HIGHLIGHTS:

The law provides benefits to an employee when "such employee" is subject to a quarantine or isolation order. Thus, the act does not appear to apply to situations where an employer is generally required to shut down due to government direction. This interpretation of the law is supported by subsection 13, which states that the act shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed.

The new law further states that, "each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, the NY Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19," is entitled to receive the below discussed benefits from her or his employer. The specific amount of leave required depends on the size of the employer and its net income, determined by the previous tax year.

1. Employers with 10 or fewer employees and a net income of less than \$1 million:

- **Unpaid** leave until the termination of any mandatory or precautionary order of quarantine or isolation; and
- Immediate access to Paid Family Leave and disability benefits (short-term disability) through the duration of quarantine or isolation.

2. Employers with 10 or fewer employees and a net income of at least \$1 million in the previous tax year, need to provide each employee with:

- Five (5) days of **paid** sick leave;
- **Unpaid** leave (after the five (5) day paid sick leave period) through the duration of the quarantine or isolation order; and
- Immediate access to Paid Family Leave and disability benefits (short-term disability) through the duration of quarantine or isolation.

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3. Employers with 11 to 99 employees as of January 1, 2020:

- Five (5) days of **paid** sick leave;
- **Unpaid** leave (after the five (5) day sick leave period) through the duration of the quarantine or isolation order; and
- Immediate access to Paid Family Leave and disability benefits (short-term disability) through the duration of quarantine or isolation.

4. Employers with 100 or more employees:

- **Fourteen (14)** days of **paid** leave;
- **Unpaid** leave (after the paid sick leave) through the duration of the quarantine or isolation order period.

5. Public employers (regardless of number of employees):

- **Fourteen (14)** days of **paid** leave; and
- **Unpaid** leave for the remainder of the duration of the quarantine or isolation order period

Important Notes:

- **Pay Rate:** The paid leave time is at each employee's **regular rate of pay**.
- **Termination:** Employees **cannot be terminated for such leave**.
- **Eligibility for Benefits/Leave:** The statutory leave and benefits are only available to employees who have been officially quarantined or isolated by a local or state government agency. These benefits are **not available** to employees who are in **voluntary quarantine or isolation**, those who merely fear they have been infected by the virus, those who object to reporting to work for fear of exposure to the virus, and those who are placed on leave, layoff, or furlough by an employer.
- **Employees working remotely:** The new law "shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition **and** is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means." If the employee becomes symptomatic, and cannot work, the above benefits apply.
- **No Loss of Accrued Sick Leave:** The law also explicitly states that its prescribed leave benefits are in addition to any sick leave or paid time off already provided by the employer, and the leave called for in the new law "shall be provided without loss of an employee's accrued sick leave."
- **Does not apply to employees who voluntarily traveled:** The legislation also excludes employees who have traveled to a country having a level two or three travel health notice issued by the Centers for Disease Control and Prevention (CDC) if the travel was not taken as part of the employee's employment or at the employer's direction, the employee had notice of the CDC warnings. However, such an employee remains eligible for benefits under this statute if Paid Family Leave is needed to care for a family member. An employee denied benefits because of such travel, however, can use their existing accrued and unused paid time off.

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- **Federal Law—the New York Statute Only applies if Greater than Federal Law:** The new state benefits only apply if they provide employee benefits in excess of what is available under federal law. The federal government recently passed the Families First Coronavirus Response Act, which guarantees certain employees paid time off for reasons related to the coronavirus.

Disability and Paid Family Leave Notes:

On the issue of disability benefits and Paid Family Leave, New York State, the act:

(1) Expanded the definition of “disability” in Article 9 of the Workers’ Compensation Law, to include “the inability to do work because of a mandatory or precautionary order of quarantine after the employee has exhausted all paid sick leave,” which will entitle eligible employees to a percentage of their average weekly wages up to a maximum of \$2,043.92 in benefits per week.

(2) Expanded the definition of “family leave” under Article 9 of the Workers’ Compensation Law to include:

- a. Leave taken to comply with a mandatory or precautionary order of quarantine.
- b. To provide care for the employee’s minor, dependent child who is subject to a mandatory or precautionary order of quarantine, which will entitle eligible employees a percentage of their average weekly wages **up to a maximum of \$840.70** in benefits per week.

Working Summary Chart:

EMPLOYEES	INCOME	LEAVE & BENEFITS
10 or less	Less than \$1,000,000	<ul style="list-style-type: none">• Unpaid leave• Immediate access to PFL & DB
10 or less	\$1,000,000 or more	<ul style="list-style-type: none">• Five (5) days of paid sick leave• Unpaid leave after the five-day period• Immediate access to PFL & DB
11 – 99	N/A	<ul style="list-style-type: none">• Five (5) days of paid sick leave• Unpaid leave after the five-day period• Immediate access to PFL & DB
100 or more	N/A	<ul style="list-style-type: none">• Fourteen (14) days of paid leave• Unpaid leave after the fourteen-day period
Public Employers		<ul style="list-style-type: none">• Fourteen (14) days of paid leave• Unpaid leave after the fourteen-day period