

New York State Requires Sick Leave and Job Protection for Employees Subject to Quarantine or Isolation due to COVID-19 Crisis

by Kathryn T. Lundy and Marc B. Zimmerman

A FREEBORN & PETERS LLP CLIENT ALERT

ABOUT THIS CLIENT ALERT

The State of New York recently signed an emergency sick leave plan into law in response to the COVID-19 crisis. This Client Alert details what the law means for employers in the state.

Governor Andrew Cuomo signed into law an emergency sick leave plan, effective March 18, 2020, for employees unable to work due to a mandatory or precautionary order of quarantine or isolation due to COVID-19. All leave required under the law is in addition to an employee's accrued sick leave (if any).



The amount of leave is based upon the employer's size, as follows:

- Employers with 10 or fewer employees as of 1/1/2020 and a net income of \$1 million or less must provide unpaid leave through the period of quarantine or isolation, during which the employee shall be eligible for paid family leave and disability benefits;
- Employers with 10 or fewer employees as of 1/1/2020 and a net income of more than \$1 million and employers with between 11 and 99 employees as of 1/1/2020 (regardless of net income) must provide at least 5 days of paid sick leave and unpaid leave thereafter through the period of quarantine or isolation, during which the employee shall be eligible for paid family leave and disability benefits;
- Employers with 100 or more employees as of 1/1/2020 must provide at least 14 days of paid sick leave during the period of quarantine or isolation.

The New York law also provides full job protection for all employees taking leave under the law, requiring restoration to the employee's former position with the same pay and terms and conditions of employment following the protected leave.

The New York law specifically does not apply to:

- (1) any employee deemed asymptomatic or not yet diagnosed with any medical condition and who is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means; or
- (2) any employee quarantined because the employee has returned from non-employment related or directed business travel to a country for which the CDC issued a level 2 or 3 travel health notice and was provided notice of the health notice and that such travel would limit benefits under the law prior to traveling.

The New York law is not in addition to similar overlap leave provided by the federal government related to COVID-19 (for example, the Families First Coronavirus Response Act (FFCRA) (see our Alert about FFCRA [here](#)), but only requires New York employers provide the emergency sick leave benefits only to the extent greater than those provided under federal law, except to the extent it provides for greater benefits provided by the federal government. Finally, the New York law does not appear to obligate an employer to pay emergency sick leave benefits to employees unable to work due to the employer's decision to voluntarily cease operations in connection with COVID-19 concerns.

This is a rapidly evolving area of the law, so stay tuned for more developments on [Freeborn's COVID-19 webpage](#). If you have questions, please contact Kathryn Lundy and Marc Zimmerman.

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