

COVID-19 LEAVE OBLIGATIONS FOR NEW YORK EMPLOYERS

New York and the federal government have both passed laws requiring employers to provide emergency leave to employees related to COVID-19, including the New York Emergency Paid Sick Leave Law (the “NY EPSL”) and the federal Families First Coronavirus Response Act (the “FFCRA”). New York employees are eligible for benefits under the NY EPSL when the benefits provided by that law exceed those provided by the FFCRA. The below chart summarizes the benefits available under each of these laws, however, given the myriad issues related to, among other things, overlapping legal schemes, we recommend that employers consult with employment counsel when dealing with requests for leave.

	NY EPSL (including Paid Family Leave (“PFL”) and NY Short Term Disability (“DBL”) considerations)	FFCRA Emergency Paid Sick Leave	FFCRA Emergency Family Medical Leave (“EFMLA”)
Covered Employers	All employers in New York but benefits vary based on size and net income of employer.	Private employers with fewer than 500 employees. ¹	Private employers with fewer than 500 employees. ²
Eligible Employees	Emergency sick leave: All employees. ³ PFL: Full-time employees (20+ hours per week) are eligible after 26 consecutive weeks of employment. Part-time employees (<20 hours per week) are eligible after working 175 days.	All employees. ⁴	Employees who have been employed for at least 30 days. ⁵

¹ According to guidance from the Department of Labor (“DOL”), employers with fewer than 50 employees may claim an exemption from leave taken for reasons of child care and school closures related to COVID-19.

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³ An employee is ineligible if employee is asymptomatic or has not been diagnosed with a medical condition and is physically able to work while under order of quarantine or isolation, whether through remote or similar means. An employee is ineligible for *paid* benefits if the employee is subject to an order of quarantine or isolation because (1) the employee returned to the U.S. after traveling to a country for which the Centers for Disease Control has issued a Level 2 or 3 travel advisory; (2) the travel was not at the direction of the employer; and (3) the employee was provided notice of the travel advisory and the limitations of this law prior to travel.

⁴ An employer of a health care provider or emergency responder can elect to exclude such employees.

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Purposes of Leaves	<p>Employee is subject to a mandatory or precautionary quarantine or isolation order issued by the State, the Department of Health, the local board of health or any governmental entity duly authorized to make such an order.</p> <p>Employee can also use PFL to care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation.</p>	<p>Employee is unable to work (or telework) because:</p> <ol style="list-style-type: none"> 1. The employee is subject to a federal, state or local quarantine or isolation order; 2. The employee has been advised by a healthcare provider to self-quarantine; 3. The employee is experiencing symptoms and seeking a medical diagnosis; 4. The employee is caring for an individual who is subject to an order of self-quarantine; 5. The employee is caring for a son or daughter if school or child care is closed/unavailable; or 6. The employee is experiencing any other substantially similar condition specified by Health & Human Services. 	<p>The employee is unable to work (or telework) due to the need for leave to care for the employee’s minor son or daughter if the son or daughter’s school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to a public health emergency.</p>
Duration of Leaves	<p>For employee subject to a quarantine or isolation order:</p> <ul style="list-style-type: none"> • Employer has 10 or fewer employees and less than \$1 million in net income: Unpaid sick leave for duration of quarantine or isolation but eligible for DBL and PFL. • Employer has 10 or fewer employees and more than \$1 million in net income: Five days of paid sick leave plus unpaid leave for the duration of the quarantine or isolation and employee is eligible for DBL and PFL. • Employer has between 11 and 99 employees: Five days of paid sick leave plus unpaid leave for the duration of the 	<p>Two weeks (80 hours for full-time employees and typical number of hours over two-week period for part-time employees).</p> <p>Notably, DOL guidance states that paid sick leave is in addition to employees’ preexisting leave entitlements.</p>	<p>Up to 12 weeks (the first 10 days of which are unpaid).⁶</p> <p>Notably, DOL guidance provides that employees may take a total of 12 weeks pursuant to the Family Medical Leave Act (“FMLA”) and EFMLA during a 12-month period.</p>

⁶ The employee may choose to substitute accrued paid leave (including emergency paid sick leave) during the 10-day period but the employer may not require the employee to substitute paid leave.

	<p>quarantine or isolation and is eligible for DBL and PFL.</p> <ul style="list-style-type: none"> • Employer has 100 or more employees: 14 days of paid sick leave. <p>With respect to PFL, in 2020, employees may be eligible for up to 10 weeks.</p> <p>Notably, NY EPSL is in addition to an employee's accrued sick leave but time taken with DBL and PFL benefits reduces that coverage.</p>		
<p>Rates of Pay</p>	<p>Employees are entitled to the full rate of pay they would have otherwise received had they been continuing to work for that period.</p> <p>After using paid sick leave, employees may be eligible for PFL and DBL. If eligible, employees are entitled to PFL benefits of 60% of their average weekly wage, up to a maximum weekly benefit of \$840.70. After receiving the full PFL benefit, employee may receive disability benefits to match the employee's full wages up to a maximum weekly disability benefit of \$2,043.92, for a total of \$2,884.62 per week.</p> <p>In addition, employees may be eligible for PFL for care of a child subject to a mandatory or precautionary order of quarantine or isolation, consisting of 60% of their average weekly wage, up to a maximum weekly benefit of \$840.70.</p>	<p>For purposes listed in (1)-(3) above, the greater of the employee's regular rate of pay or the applicable minimum wage, capped at \$511 per day and \$5110 in the aggregate per person (over a two-week period).</p> <p>For purposes listed in (4) and (6) above, the greater of 2/3 of the employee's regular rate of pay or 2/3 of the applicable minimum wage, capped at \$200 per day and \$2000 in the aggregate per person (over a two-week period).</p>	<p>After 10 days, the greater of 2/3 of the employee's regular rate of pay or 2/3 of the applicable minimum wage, capped at \$200 per day and \$12,000 in the aggregate per person (over a 12-week period).</p>

In addition to the leave laws discussed above, employers should not ignore other New York leave laws, such as New York City's Earned Safe and Sick Time Act, Westchester County's Earned Sick Leave Law, as well as New York State's new sick leave laws, effective on January 1, 2021 addressed in our prior [alert](#).

If you have any questions related to COVID-19 leave obligations or other employment-related questions, please contact me at (212) 554-7631 or salexander@mosessinger.com.