

March 19, 2020

## **New York Passes Emergency Paid Sick Leave Law for COVID-19 Relief**

On March 18, 2020, New York Governor Andrew Cuomo signed a law passed by the New York Legislature regarding paid sick leave for New Yorkers in response to COVID-19 (the “Paid Sick Leave Law”). The law’s provisions addressing COVID-19 are effective immediately, while more general changes to paid sick leave will take effect later this year. This Client Alert summarizes key provisions of the bill, including criteria for employee eligibility, qualifying employers and restrictions on accessing the leave provisions. For additional resources and real-time updates regarding new legal developments in connection with COVID-19, please visit Paul, Weiss’s [Coronavirus Resource Center](#).

### **Immediate Paid Sick Leave and Job Protection**

Effective immediately, the Paid Sick Leave Law provides paid sick leave and guarantees access to New York State’s Paid Family Leave Benefit Law and disability benefits for all eligible employees who are subject to a mandatory or precautionary order of quarantine or isolation for COVID-19, as follows:

- Employees of employers with 10 or fewer employees as of January 1, 2020 and \$1 million or less of net income in the previous tax year will receive unpaid leave until the termination of any mandatory or precautionary order of quarantine or isolation and shall be eligible for paid family leave benefits and benefits due to disability.<sup>1</sup>
- Employees of employers with 11 to 99 employees, and employees of employers with 10 or fewer employees and more than \$1 million of net income, will also receive five days of paid sick leave and then unpaid leave.<sup>2</sup>
- Employees of public employers or employers with 100 or more employees will also receive 14 days of paid sick leave and then unpaid leave.<sup>3</sup>

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<sup>1</sup> S08091, N.Y. Legis. Assemb., 2019-2020, (2020-03-18) § 1(a).

<sup>2</sup> *Id.* § 1(b).

<sup>3</sup> *Id.* § 1(c).

An employee is eligible if he or she is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.<sup>4</sup>

An employee is not eligible for benefits under the Paid Sick Leave Law if the employee is subject to a COVID-19 quarantine order because the employee knowingly traveled to a country for which the Centers for Disease Control and Prevention (CDC) issued a level 2 or 3 travel health notice, and that travel was not part of his or her employment or at the request of the employer.<sup>5</sup>

The Paid Sick Leave Law also does not apply if 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.<sup>6</sup>

Any employee who receives sick leave from a federal government program in response to COVID-19 will have such leave counted toward the amounts of guaranteed leave under the Paid Sick Leave Law.<sup>7</sup>

The Paid Sick Leave Law's requirements do not apply at this time to employees of private employers that voluntarily close business operations due to health and safety concerns regarding COVID-19.

Further, the Paid Sick Leave Law prohibits employers from retaliating against an employee who takes sick leave in accordance with the law.

### **Statutory Sick Leave Effective in 180 Days**

In addition to providing paid sick leave for eligible employees affected by COVID-19, the Paid Sick Leave Law amends New York's Labor Law to provide sick leave for all employees. Effective 180 days from the Paid Sick Leave Law's enactment, which by our calculation is on September 14, 2020, the following provisions will come into effect:

- Employees of employers with four or fewer employees and with a net income equal to or less than \$1 million in the prior tax year shall receive up to 40 hours unpaid sick leave in each calendar year.<sup>8</sup>

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<sup>4</sup> *Id.* § 1.1(a).

<sup>5</sup> *Id.* § 1.4.

<sup>6</sup> *Id.* § 1.13.

<sup>7</sup> *Id.* § 1.17.

<sup>8</sup> *Id.* § 2.1(a).

- Employees of employers with five to 99 employees, and employees of employers with four or fewer employees and more than \$1 million net income, will also receive 40 hours of paid sick leave.<sup>9</sup>
- Employees of public employers or employers with 100 or more employees will also receive 56 hours of paid sick leave.<sup>10</sup>

The Paid Sick Leave Law states that nothing in these paid sick leave requirements prohibits employers from providing sick leave, paid or unpaid, in excess of the required paid sick leave requirements.<sup>11</sup>

Employees shall accrue sick leave at a rate of not less than one hour per every 30 hours worked.<sup>12</sup>

### **Allowable Purposes for Sick Leave Effective on January 1, 2021**

On and after January 1, 2021, the Paid Sick Leave Law provides that upon an oral or written request of an employee, an employer shall provide accrued sick leave to the employee for the following purposes:

- For a mental or physical illness, injury or health condition of such employee or such employee's family member, regardless if a diagnosis has been made or medical care is required;<sup>13</sup>
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventative care for, such employee or such employee's family member;<sup>14</sup> and
- For an absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, for such employee or a family member to seek services or assistance.<sup>15</sup>

All employers remain subject to local sick leave ordinances that exceed the requirements of the Paid Sick Leave Law.

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<sup>9</sup> *Id.* § 2.1(b).

<sup>10</sup> *Id.* § 2.1(c).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* § 2.3.

<sup>13</sup> *Id.* § 2.4(a)(i).

<sup>14</sup> *Id.* § 2.4(a)(ii).

<sup>15</sup> *Id.* § 2.4(a)(iii).

**Additional Information Related to COVID-19**

We will continue to monitor developments and keep clients apprised of pertinent information.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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