New York Enacts COVID-19 Sick Leave Law, Effective Immediately

ALERT | March 20, 2020

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This article was updated on March 26, 2020 to incorporate New York state’s expanded FAQs.

On March 18, New York passed legislation that provides employees with sick leave benefits and job protection (New York Sick Leave Law or NYSLL). The NYSLL is effective immediately. Prior to this law, New York did not have any statewide sick leave laws. The NYSLL provides for sick leave specific to COVID-19. It also waives the waiting period for paid family leave and temporary disability benefits.
Employers in New York with fewer than 500 employees are subject to both the newly enacted federal Families First Coronavirus Response Act (which includes the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA)) and the NYSLL. The law that provides the more generous benefit applies, which will depend on employer size and the reason the employee cannot work (employee himself/herself is ill or quarantined, employee is taking care of a child whose school is closed, etc.).

Key Similarities and Differences
• Both the federal EPSLA and the NYSLL provide employees with immediate sick leave benefits — there is no minimum period of employment.

• The EPSLA provides up to 80 hours of paid sick leave. The NYSLL provides for the amount of compensation the employee would have otherwise received while the employee is subject to the order, up to 14 calendar days. For example, employees who work 40 hours a week would receive 80 hours of pay for a 14-day quarantine period. Employees who work 45 hours a week would receive 90 hours of pay for a 14-day quarantine period.

• The federal EFMLEA provides up to 12 weeks of job-protected family leave. In contrast, the NYSLL provides job-protected leave for the duration of a government-ordered mandatory or precautionary quarantine or isolation.

• The federal EPSLA and EFMLEA permit the Department of Labor to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business, although the Department of Labor has not yet done so. The NYSLL does not have any such exemptions.

• The NYSLL provides sick leave specific to employees who are subject to a government quarantine or isolation order and expands paid family leave benefits to employees who are caring for a child who is subject to such an order. In contrast, the federal EPSLA and EFMLEA have broader coverage and include benefits for employees who cannot work because they are caring for a child whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19.
The NYSLL went into effect on March 18, 2020 (and applies retroactively, as detailed below), and the EPSLA and EFMLEA go into effect on April 1, 2020. Therefore, employees who are subject to an order (as defined below) before April 1, 2020 are entitled to NYSLL. On or after April 1, if employees are eligible for EPSLA or EFMLEA, they are entitled to up to an additional two weeks of EPSLA and 10 weeks of EFMLEA. Leave that is taken under the NYSLL on or after April 1 that also falls under EPSLA will run concurrently.

**New York Sick Leave Law Details**

Employees who are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 (Eligible Employees) are entitled to sick leave benefits, the extent of which varies by employer size. These benefits do not apply when the 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. These benefits also do not apply to an employee who has independently decided to quarantine.

New York has not explicitly provided guidance on whether employees who cannot work due to the statewide closure of nonessential businesses fall under the NYSLL. However, based on its text, the NYSLL applies only to employees who are under an order of quarantine or isolation, and the statewide closure is not an order of quarantine or isolation. While it severely limits the reasons people can leave their homes, it does not require total quarantine/isolation. Employees whose place of business has closed and cannot work remotely can apply for New York unemployment benefits.

Employee count under the NYSLL is measured as of January 1, 2020. The provisions apply to orders of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any other governmental entity authorized to issue such orders due to COVID-19 (Order(s)). Net income is measured by the previous tax year.

The NYSLL states that the leave shall be provided “without loss” of an employee’s accrued sick leave. Thus, if an employee has accrued, unused sick leave under an employer’s existing policy, that bank should not be drawn down concurrently or before an Eligible Employee uses sick leave benefits under the statute.
The NYSLL is also available retroactively for employees who are currently under an Order that was issued before the enactment of the NYSLL on March 18, 2020.

Employers with one to 10 employees (small employers) and a net income of less than $1 million per year must provide Eligible Employees with (1) unpaid sick days until the termination of the Order(s); (2) no waiting period for paid family leave and temporary disability benefits; and (3) full job protection for the duration of the Order(s).

Employers with 11 to 99 employees (medium employers) and small employers with a net income of $1 million or more per year must provide Eligible Employees with (1) a minimum of five paid sick days, and unpaid leave for the balance of the time until the termination of the Order(s); (2) immediate eligibility for paid family leave and/or temporary disability benefits after paid sick leave has been exhausted; and (3) full job protection for the duration of the Order(s).

Employers with 100 or more employees (large employers) must provide Eligible Employees with (1) a minimum of 14 paid sick leave days, and unpaid leave for the balance of the time until the termination of the Order(s); (2) immediate eligibility for paid family leave and/or temporary disability benefits after paid sick leave has been exhausted; and (3) full job protection for the duration of the Order(s).

NYSLL is paid at the employee's regular rate of pay.

The NYSLL amends the definition of “disability” under the temporary disability law to include: “Any inability of an employee to perform the regular duties of his or her employment or the duties of any other employment which his or her employer may offer him or her as a result of a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 and when the employee has exhausted all paid sick leave provided by the employee’s employer under this act.” If an employee is unable to work because of an Order, after paid sick leave is exhausted, the employee can apply for paid family leave and/or temporary disability benefits. Employees who are only entitled to unpaid sick leave under the NYSLL are immediately eligible for paid family leave and/or temporary disability benefits.
The NYSLL also amends the definition of “family leave” under the temporary disability law to include leave taken “to provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.” An employee who is not personally subject to an Order, but is carrying for a minor child subject to an Order, can apply for paid family leave and/or disability benefits.

Paid family leave provides up to 60 percent of pay, up to a maximum weekly benefit of $840.70. If an employee’s weekly wage is higher than $840.70, the employee may receive additional disability benefits, up to a maximum weekly benefit of $2,043.92.

On its own, the NYSLL is quite complex and provides employees with benefits in a number of different scenarios. The complexity and headache increases when employers must consider the interplay of the NYSLL with the federal Families First Coronavirus Response Act. Please contact any member of the Pepper Hamilton or Troutman Sanders Labor and Employment Practice Groups to discuss your business’s response to COVID-19.