

**New York law requires that, in the event of federal action on the coronavirus, employers must apply the plan most generous to employees.**

*In most cases, New York State's new emergency paid sick leave will be more generous for employees subject to quarantine or isolation by a public health official or have a minor child quarantined. In that case, employers should provide benefits provided by that law.*

- Provide forms required for employee to apply for Paid Family Leave (PFL) and New York State Short Term Disability (DBL)
- Employers of 10 or fewer as of January 1, 2020 must provide **unpaid**, job protected sick time during an employee's period of ordered quarantine or isolation, except those employers with net income of more than \$1 million, which must provide five days of **paid** sick leave
- Employers of 11 to 99 must provide five days of **paid** sick leave
- Benefits **would not** be available to employees deemed asymptomatic or not yet diagnosed with any medical condition and is physically able to work, through remote access or other means
- This leave is job protected and employees are, interestingly, not eligible to use this leave if the employee is returning from personal travel to one of the destinations on the CDC travel advisory list. These employees would be able to use any available employer provided leave time or, absent that, unpaid sick leave for the duration of the quarantine.
- For employers of 99 employees or less, should an employee's period of quarantine or isolation extend beyond available sick time, the employee would be able to apply for Paid Family Leave (PFL) **and** New York State Short Term Disability (DBL)
- Additionally, there is no waiting period for the commencement of DBL payments under these circumstances. PFL/DBL benefits may also be used to care for a dependent minor child under such a mandatory quarantine or isolation order; this provision does not apply in cases where the child's school is closed and requires daycare.

*In the case of an employee requiring leave to care for a child whose school has closed due to the coronavirus, or other applicable situations, the Federal law would be most generous and would be in effect.*

- The Senate passed and the President signed the [Families First Coronavirus Response Act](#) that includes paid sick leave and an expanded family and medical leave act for most employers in the state. The president signed the legislation on the evening of March 18, which means the leave **provisions will go into effect on April 2.**

The Federal Act now allows an eligible employee to take paid sick leave because the employee is:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19
- Advised by a health care provider to self-quarantine due to COVID-19 concerns
- Experiencing COVID-19 symptoms and seeking medical diagnosis
- Caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
- Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or
- Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- This provision requires employers with fewer than 500 employees to provide full-time employees (regardless of the employee's duration of employment prior to leave) with 80 hours of **paid** sick leave at the employee's regular rate.
- Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.

#### **Tax Credits for Paid Sick and Paid Family Leave**

- The federal bill provides a series of refundable tax credits for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described above. These tax credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave or qualified family leave wages exceed the taxes they would owe.
- Specifically, employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with the Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter.