



# New York Issues Guidance on COVID-19 Quarantine Leave

Issued date: 04/02/20

On March 18, New York passed its own response to COVID-19 and implemented new paid leave for employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by a governmental entity (“Quarantine Order”). Employees can get financial compensation by using a combination of benefits, which includes a new employer-provided paid sick leave (depending on the size of the employer), Paid Family Leave and disability benefits. New York has issued guidance in the form of Frequently Asked Questions clarifying the new employer-paid sick leave law. Below are highlights of the guidance.

If an employee is under a Quarantine, s/he may be eligible under the new employer-paid sick law for certain benefits in connection with a leave pursuant to a Quarantine, as follows:

- Employers with 10 or less employees as of January 1, 2020 who made \$1 million or less in 2019 must provide employees with unpaid sick leave, but employees may be eligible to receive their weekly wages through a combination of NY PFL and NY DBL up to a maximum of \$2,884.62 per week.
- Employers with 10 or less employees as of January 1, 2020 who make more than \$1 million in 2019 and employers with 11-99 employees as of January 1, 2020

must provide employees 5 days of paid sick leave, followed by unpaid sick leave and guaranteed access to NY Paid Family Leave and NY DBL for the period of the quarantine, where employees may be eligible to receive their weekly wages through a combination of NY PFL and NY DBL up to a maximum of \$2,884.62 per week.

- Employers with 100 or more employees as of January 1, 2020 and public employers must provide employees 14 days of paid sick leave at their regular rate of pay, which should cover the mandatory or precautionary quarantine or order of isolation.

## ■ Payment for Leave

For the 5 or 14-day paid leave period (the “Quarantine Leave”), employees must be paid the amount they would otherwise have received if they had been continuing to work. Hourly, part-time, commissions salespeople and other employees who are not paid a fixed wage should be paid an amount that is determined by the employer looking at a representative period-of-time to set the employee’s average daily pay rate. There is no waiting period for Quarantine Leave.

The number of paid days is calendar days, and the pay required should represent the amount of money the employee would have otherwise received for the Quarantine Leave. For example, if an employee of a large employer would otherwise have worked three days during that 14-day Quarantine Leave, the employee would be entitled to only 3 days of paid sick leave. Payments to employees should be made in the paycheck for the applicable pay period for the Quarantine Leave.

Employees do not have to apply for employer-paid sick leave for a Quarantine Leave. If an employee runs out of paid sick days, s/he would need to apply for Paid Family Leave and disability benefits for compensation during the rest of his or her quarantine. To apply for Paid Family Leave and disability benefits for the rest of an employee's Quarantine Leave, an employee must:

- Complete either the Request for COVID-19 Quarantine Leave for Yourself form package or Request for COVID-19 Quarantine Leave for Minor Dependent Child form package (located at [PaidFamilyLeave.ny.gov/COVID-19](https://PaidFamilyLeave.ny.gov/COVID-19));
- send the completed forms to the employer to complete (the employer has three business days to complete); and
- submit completed forms together with the Quarantine Order.

Once the employee's package is submitted, the insurance carrier must pay or deny the claim within 18 calendar days. If the claim is denied, employees may file a request for arbitration to have the claim reviewed by a neutral arbitrator.

## ■ Eligibility

Employees that independently choose to Quarantine themselves are not eligible for a Quarantine Leave. Employees who do not show symptoms and who are physically able to work through remote access or similar means, are not eligible for Quarantine Leave. If an employee is subject to a Quarantine because s/he voluntarily traveled to a country with level two or three health notice from the CDC even after notice of the travel health notice and if such travel was not work related, the employee is not eligible for a Quarantine Leave. Finally, employees of employers who temporarily shut down or go out of business due to COVID-19 are not eligible for a Quarantine Leave but may be eligible for unemployment benefits.

## ■ Coordination of Leave

Quarantine Leave is available retroactively and may be taken even if the Quarantine Order was issued prior to the enactment of New York's employer-paid sick leave law.

Quarantine Leave must be provided separately from any other accrued leave and employers may not require employees to use existing sick leave or other paid time off for a Quarantine Leave.

If an employee's child's school is closed due to a Quarantine Order, the employee may be eligible to take Quarantine Leave. However, if the school was closed for preventative social distancing, the employee would not be eligible.

An employee who is under a Quarantine Order may also be eligible for Paid Family Leave/disability benefits for himself or herself unless s/he is not showing symptoms and is physically able to work through remote access or similar means. Available employer-paid sick leave must be exhausted before taking Paid Family Leave and disability benefits – an employee can apply for these benefits for the remainder of the Quarantine Leave, as discussed above.

Employees in New York who are also covered by the Families First Coronavirus Response Act are eligible to receive the difference between what the federal legislation provides and what is available under the New York law. We are hopeful that guidance will be issued that will provide specific details on the coordination between these two laws.

## ■ Job Protection

Employees are entitled to job protection under the new employer-paid sick leave law and are entitled to be restored to the position they held prior to taking Quarantine Leave. Any Quarantine Leave may not be counted as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.