

# Impact of the Coronavirus on Employers Part III

Frank Kerbein SPHR  
Director, Center for Human Resources  
The Business Council of New York State  
[frank.kerbein@bcnys.org](mailto:frank.kerbein@bcnys.org)  
800.332.2117

---

Working to create economic growth, good jobs and strong communities across New York State.

---



Materials are presented as informational only and not intended to provide legal, business or tax advice. The Business Council of New York State, Inc. does not provide legal, business or tax advice. The accuracy, completeness, adequacy or currency of the content is not warranted or guaranteed. Our presentations are not substitutes for the advices or services of an attorney. We recommend you consult a lawyer or other appropriate professional if you want legal, business or tax advice.



# New York State Emergency Paid Sick Leave

- Signed March 18, 2020
- Effective immediately
- Combination of new sick time allowance and insurance products
- “Enhanced” Paid Family Leave (PFL) and NYS Short Term Disability (DBL)



# New York State Emergency Paid Sick Leave

Limited to individuals Quarantined/Isolated by Public Health Official

*Under 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 government entity duly authorized to issue such an order due to COVID-19*



# NYS Emergency Paid Sick Leave (PSL)

## Sick Leave Requirements

- 10 or fewer employees (as of January 1, 2020) – must provide unpaid, job protected sick time during an employee's period of ordered quarantine or isolation (and then PFL/DBL)
- 10 or fewer employees with net income of more than \$1 million - must provide five days of paid sick leave (and then PFL/DBL)
- 11 to 99 employees - must provide five days of paid sick leave (and then PFL/DBL)
- 100 or more employees must provide up to fourteen days of paid sick leave (no additions PFL/DBL)
- Paid for by the employer...no reimbursement
- Public employers must provide at least fourteen days of paid sick leave



# NYS Emergency Paid Sick Leave (PSL)

Then...for the duration of the quarantine/isolation-less than 100 employees:

- Combination of PFL and DBL to 100% of pay to a maximum of \$2,884.62 (\$150,000 annually)

## Example:

- An employee making \$150,000 per year (\$2,884.62 per week) may be eligible for:
  - \$840.70 payment from PFL (60% of average weekly wage to the 2020 maximum benefit amount), and
  - \$2,043.92 payment from DBL (a significant – temporary increase over the current maximum of \$170/wk.)



# NYS Emergency Paid Sick Leave (PSL)

- 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
- NOTE: Such sick leave shall be provided without loss of an employee's accrued sick leave. That is, this leave is in addition to whatever leave is already provided by the employer and is to be used first.

# NYS Emergency Paid Sick Leave (PSL)

- Employee not eligible for this benefit if quarantined/isolated after returning from personal travel to one of the destinations on the CDC travel advisory list
  - If the employee was provided notice about this limitation
  - Unpaid leave would be available



# NYS Emergency Paid Sick Leave (PSL)

Major temporary changes to long-standing laws

- Disability:
  - Waiting period waived;
  - Maximum benefit increased to @2,043.92 per week (up from \$170)
  - Definition: Quarantine/Isolation = Disability
- Paid Family Leave
  - Employee's own quarantine/isolation
  - To provide care of a minor dependent child under quarantine/isolation
- DBL/PFL would run concurrently



# NYS Emergency Paid Sick Leave (PSL)

- Protections against retaliation and discrimination.
- Risk Adjustment Pool
- No Permanent paid sick leave law
- No employer reimbursement for this expense

<https://paidfamilyleave.ny.gov/covid19#top>



# Paid Family Leave Change

- Paragraph (16) of subdivision (a) of section 355.9 of Title 12 NYCRR is hereby amended to read as follows:
- (16) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Serious health condition also means a COVID-19 diagnosis by a health care provider.
- Effective 90 days after posting of emergency rule making...June 25, 2020



# Family First Coronavirus Response Act

- Emergency Paid Sick Leave Act
- Emergency Family and Medical Leave Expansion Act
- Tax Credits For Paid Sick And Paid Family And Medical Leave
- Poster Required and updated on 3/25
- Emergency Unemployment Insurance Stabilization And Access Act Of 2020
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>



# Federal Emergency Paid Sick Leave

1. Subject to a federal, state or local quarantine or isolation order related to COVID-19
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns
3. Experiencing COVID-19 symptoms and seeking medical diagnosis
4. 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
5. 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
6. 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.



# Federal Emergency Paid Sick Leave

- Only applies to employers with less than 500 employees.
- Up to 80 hours of paid sick leave (Part timers paid regular hours worked)
- At regular rate of pay for reasons #1-3 (Capped at \$511/day; \$5,110 total)
- At 2/3 regular rate of pay for reasons #4-6 (Capped at \$200/day; \$2,000 total)
- Provides an exception for employers who are healthcare providers or emergency responders
- This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers
- This act takes effect April 1, 2020 and remains in effect until December 31, 2020.



# Health Care Provider/First Responder

Anyone employed at:

Doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity.



# Health Care Provider/First Responder

Anyone employed at:

An entity that contracts with any of the above institutions, employers, or entities institutions to provide services or to maintain the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider





# Health Care Provider/First Responder

Military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.



# Emergency FMLA Expansion

- Only businesses with less than 500 employees and all public employers will be covered by the emergency FMLA
- Only available for an employee to take FMLA leave if their child's school has closed due to the pandemic.
- The first 10 days of leave under the FMLA will be unpaid, employees may elect to use their accrued vacation and/or PTO leave during this time.
- After the first 10 days of leave, employees would be entitled to two-thirds of their regular rate. Pay would be capped at \$200 per day/\$10,000
- 10 weeks total
- Job protected leave



# Federal Emergency FMLA

- Provides an exception for employers who are healthcare providers or emergency responders
- Employees only need be employed for at least 30 days prior to the designated leave
- Exempts small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business...



# Federal Emergency FMLA

- The provision of PSL or expanded FMLA would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting PSL or expanded FMLA would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting PSL or expanded FMLA, and these labor or services are needed for the small business to operate at a minimal capacity.
- Department encourages collaboration



# Emergency Unemployment Insurance Stabilization And Access Act Of 2020

---

- The Act will provide states that meet specific requirements with 100 percent federal funding to provide extended unemployment benefits, up to an additional 26 weeks after the initial 26 weeks (i.e. up to 52 weeks of benefits). Previously, states were required to pay 50% of extended unemployment benefits. This provision will also remain in effect until December 31, 2020.



# Tax Credits For Paid Sick And Paid Family And Medical Leave

- 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
- Emergency PSL: 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
- Emergency FMLA: The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter



# Tax Credits For Paid Sick And Paid Family And Medical Leave

- Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS.
- Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable qualified health plan expenses](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#allocable%20qualified%20health%20plan%20expenses)



The  
Business  
Council

# NYS WARN Act

The New York State Worker Adjustment and Retraining Notification (WARN) Act requires businesses to give early warning of closing and layoffs. Businesses must give notice to:

- All affected employees
- Any employee representative(s)
- The New York State Department of Labor (DOL)
- The Local Workforce Investment Board (LWIB)





# NYS WARN Act

The WARN Act applies to private businesses with 50 or more full time workers in New York State. It covers:

- Closings affecting 25 or more workers
- Mass layoffs involving 25 or more full-time workers (if the 25 or more workers make up at least 33% of all the workers at the site)
- Mass layoffs involving 250 or more full-time workers
- Certain other relocations and covered reductions in work hours



# NYS WARN Act

This means that covered businesses must provide all employees with notice 90 days prior to a:

- Plant closing
- Mass layoff
- Relocation
- Other covered reduction in work hours



# NYS WARN Act

- Many businesses are facing rapid and unexpected closures due to the coronavirus. If your business is forced to close, please provide notice as soon as possible and identify the circumstances that required the closure.
- The WARN Act requirement to provide 90 days' advanced notice has not been suspended because the WARN Act already recognizes that businesses cannot predict sudden and unexpected circumstances beyond an employer's control, such as government-mandated closures, the loss of your workforce due to school closings, or other specific circumstances due to the coronavirus pandemic.



# Reduction in Pay

- NYS Wage Theft Prevention Act
- Wage Acknowledgment Forms
- <https://labor.ny.gov/workerprotection/laborstandards/employer/wage-theft-prevention-act.shtm>

# NYS Unemployment Insurance

- NYS is waiving the 7-Day waiting period for UI benefits for people who are out of work due to Coronavirus (COVID-19) closures or quarantines
- Typically, to collect benefits, you must be ***ready, willing, and able to work, and actively looking for work during each week in which you are claiming benefits.***
- Goal is not to “punish”



# NYS UI – Shared Work Program

- Employees can receive partial UI benefits while working reduced hours. Full-time, part-time and seasonal employees are eligible.
- The plan can cover your total work force, a particular shift or shifts, or a work unit or units. Submit your application at least one week, but not more than four weeks, before the proposed effective date.
- Employed at least two employees working in New York State and
- For four consecutive calendar quarters, you or your predecessor, must have:
  - Paid UI contributions or In lieu of contributions, elected reimbursement of benefits paid to your former employees
- <https://labor.ny.gov/ui/dande/sharedwork1.shtm>



# CARES Act

- Small Business “Paycheck Protection Program”
- Economic Injury Disaster Loans
  - April 8 Webinar
- Unemployment Programs

# CARES Act – Unemployment Provisions

- UI for those not eligible for regular UI
- Must be able/willing to work but is unemployed/underemployed:
  - COVID diagnosis or presentation of symptoms
  - Household member with COVID diagnosis
  - School or daycare closures and individual is primary caregiver
  - Workplace lock-down
  - Advise from health care provider to self-quarantine
  - Breadwinner due to household member died from COVID
  - Quit due to circumstances related to COVID
  - Place of employment closed due to COVID

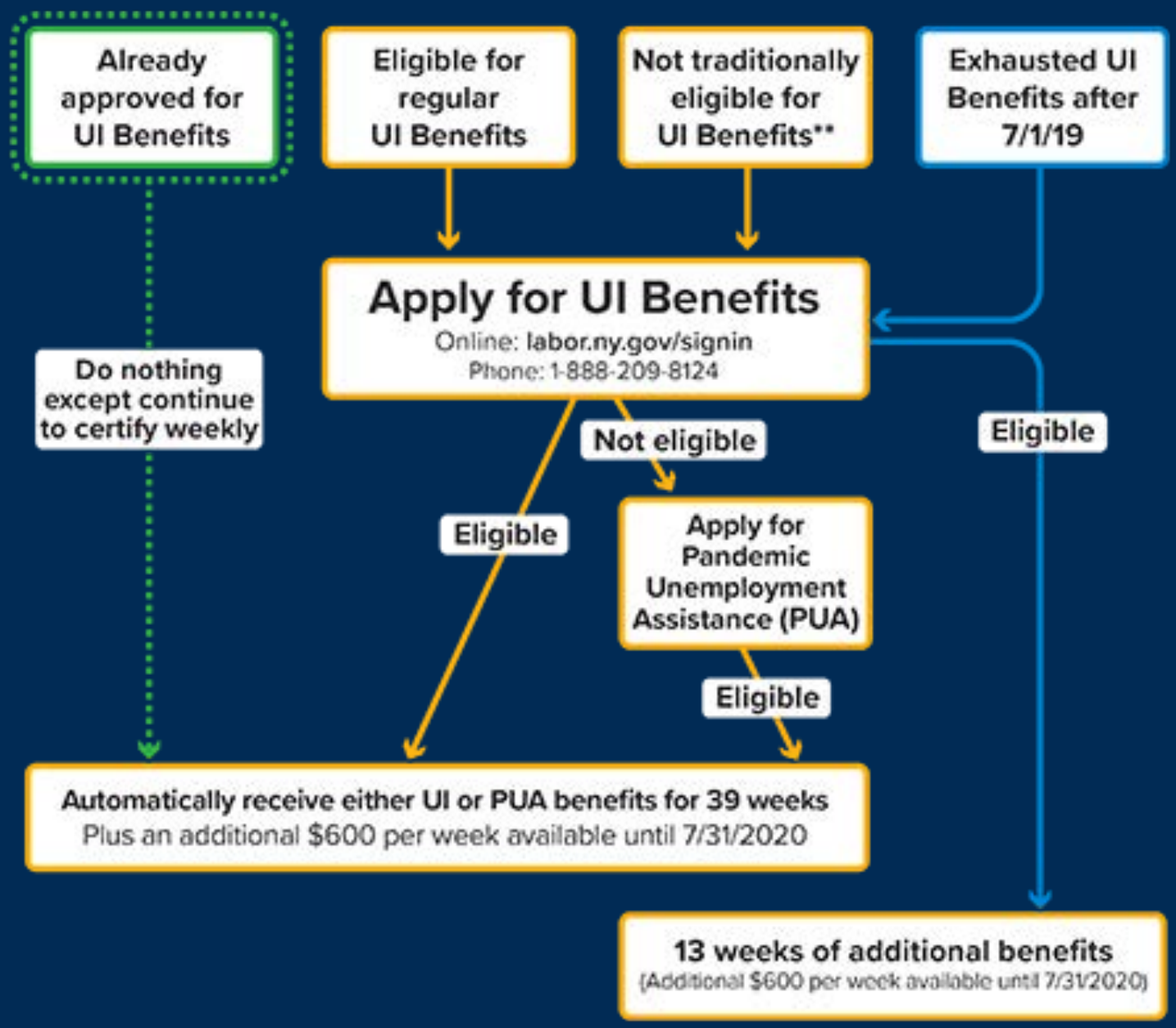




# CARES Act – Unemployment Provisions

- Additional \$600 per worker per week available
- Additional payment sunsets 7/31/2020
- Does not apply to someone working from home
- Effective 1/27/2020 to 12/31/2020
- Total cap of 39 weeks
- No one week waiting period





# Workers' Compensation

- Arising out of and in the course of employment
- Income replacement and related health care costs

# NYS Short Term Disability

- Off-the-job Illness or injury
- 50% of AWW to max of \$170/wk



# New York State Paid Family Leave

- Up to 10 weeks of leave at 60% of the employees average weekly wage to a maximum of 60% of the state's average weekly wage
- Care for a family member with a serious health condition
- Family Member:
  - Spouse, child, parent (in-laws), grandparent, grandchild, or domestic partner

# New York City/Westchester Paid Safe and Sick Leave

- Definition of Family
- Acceptable reasons for use



# Family and Medical Leave Act

- Employer and employee eligibility requirements – Employers of 50 or more
- 12 Weeks of unpaid leave in 12-month period
- Care for a serious health condition of employee or qualified family member
- Job protected leave

# Americans with Disabilities Act (ADA)

- Qualified individual with a disability protected from discrimination
- Coronavirus could create a disability or aggravate a previous disability
- May be entitled to an “accommodation”
  - Work from home
  - Leave
  - Reduced work schedule
  - Travel restrictions
- Unless an “undue hardship” or “direct threat”

# What do we do next?

- Stay informed...Communicate with your employees
- Notify employees of the availability of leave as described
- Provide job protected leave as described
- Provide forms required for employee to apply for Paid Family Leave (PFL) and New York State Short Term Disability (DBL)
- Keep records
- Watch for new developments/guidance/regulation



# Resources

- Business Council Coronavirus  
<https://www.bcnys.org/managing-coronavirus>
- NY State Covid-19 Leave  
<https://www.governor.ny.gov/programs/paid-sick-leave-covid-19-impacted-new-yorkers>
- OSHA  
<https://www.osha.gov/>
- EEOC  
<https://www.eeoc.gov/>

- New York Health Department  
<https://www.health.ny.gov/>
- Centers for Disease Control  
<https://www.cdc.gov/>
- World Health Organization  
<https://www.who.int/>
- US Dept. of Labor  
<https://www.dol.gov/>





# Next Webinar

## **Recruitment 101**

*Just the basics. Is your employment application up-to-date? What can I say in an employment advertisement? What can I ask or not ask in an employment interview. We'll cover the legal issues and best practices involved in hiring a new employee.*

Thursday, April 23, 2020

11:00 am. – 12:00 pm

*This program has been approved for HRCI certification*



Frank Kerbein SPHR  
Director, Center for Human Resources  
The Business Council of New York State

[frank.kerbein@bcnys.org](mailto:frank.kerbein@bcnys.org)

800.332.2117

Interested in Membership?

<https://www.bcnys.org/become-a-member>

