

New Guidance NYS COVID Paid Sick Leave

Frank Kerbein SPHR
Director, Center for Human Resources
The Business Council of New York State
frank.kerbein@bcnys.org
800.332.2117

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COVID Paid Sick Leave

- FFCRA (Federal)
 - Paid Sick Leave/Paid Family Leave
 - Reimbursable Tax Credits
 - Expired 12/31/20 – May continue voluntarily until 3/31/21
- NYS COVID Paid Sick Leave
 - Only if quarantined by a public health official
 - Less than 100 employees – 5 days; DBL/PFL
 - More than 100 employees – 14 days
 - Not reimbursable



FFCRA 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



FFCRA 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 #4-5 (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.**



FFCRA Emergency FMLA Expansion

- Only available for an employee to take FMLA leave if their child's school has closed due to the pandemic
- Only businesses with less than 500 employees and all public employers will be covered by the emergency FMLA
- 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



FFCRA 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...

Tax Credits For FFCRA Paid Sick And Paid Family 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
- 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.



New York State COVID Paid Sick Leave

- 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 COVID Paid Sick Leave

Sick Leave Requirements

- 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 (and then PFL/DBL)
- Employers of 10 or fewer with net income of more than \$1 million - must provide five days of paid sick leave (and then PFL/DBL)
- Employers of 11 to 99 - must provide five days of paid sick leave (and then PFL/DBL)
- Employers of 100 or more must provide up to fourteen days of paid sick leave (no additions PFL/DBL)
- Public employers must provide at least fourteen days of paid sick leave



NYS COVID Paid Sick Leave

Then...for the duration of the quarantine/isolation:

- 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 COVID 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
- 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 COVID Paid Sick Leave

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



New NYS COVID Paid Sick Leave Guidance

- An employee who returns to work following a period of mandatory quarantine or isolation does not need to be tested before returning to work, except for nursing home staff. However, an employee who subsequently receives a positive diagnostic test result for COVID- 19 must not report to work. The employee shall be deemed to be subject to a mandatory order of isolation from the Department of Health and shall be entitled to sick leave as required by New York's COVID-19 sick leave law, whether or not the employee already has received sick leave as required by the law for the first period of quarantine or isolation.
- An employee who is subject to an order of quarantine or isolation but continues to test positive for COVID-19 after the end of such quarantine or isolation period must not report to work. Please note that an employee is not recommended to be tested to discontinue isolation or quarantine. The employee shall be deemed to be subject to another mandatory order of isolation from the Department of Health and shall be entitled to sick leave as required by New York's COVID-19 sick leave law for the subsequent period of isolation.
- In no event shall an employee qualify for sick leave under New York's COVID-19 sick leave law for more than three orders of quarantine or isolation. The second and third orders must be based on a positive COVID-19 test.



New NYS COVID Paid Sick Leave Guidance

- if an employer mandates that an employee who is not otherwise subject to a mandatory or precautionary order of quarantine or isolation to remain out of work due to exposure or potential exposure to COVID-19, regardless of whether such exposure or potential exposure was in the workplace, the employer shall continue to pay the employee at the employee's regular rate of pay until such time as the employer permits the employee to return to work or the employee becomes subject to a mandatory or precautionary order of quarantine or isolation, at which time the employee shall receive sick leave as required by New York's COVID-19 sick leave law.



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