

Coronavirus Legal Update: An Employer's Guide



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Presented by
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Federal Families First Coronavirus Response Act (FFCRA)

- Becomes effective April 2, 2020
- Two main provisions for employers
 - Expanded Family and Medical Leave Act (FMLA)
 - Emergency Paid Sick Leave
- Unless extended, both should end on December 31, 2020

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Expanded FMLA

- FMLA provides job-protected leave for
 - Employee's own or immediate family member's "serious health condition"
 - Family member's military service-related leave
- New FMLA job-protected leave category: "qualifying need related to a public health emergency" with respect to COVID-19
 - To care for employee's child if child's school or daycare has been closed, or childcare provider is unavailable, due to public health emergency

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Expanded FMLA

- Before FFCRA, FMLA only applied to employers of 50 or more
- Now applies to private employers *with fewer than 500 employees*
 - Exemptions for health care providers, emergency responders and public agencies
 - Employers with fewer than 50 can seek exemption for Sec. of Labor if economic viability jeopardized by complying with new law

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Expanded FMLA

- Before FFCRA, to be eligible for any FMLA leave, employee had to be employed for 1 year and work at least 1250 hours
- Now, public health emergency leave available to any employee employed for 30 calendar days
 - Initial 10 days leave are unpaid, unless an employee **voluntarily elects** to use existing accrued paid time off to cover the unpaid leave
 - Employer prohibited from **requiring** an employee to use existing paid leave during this time period.
 - Please note that “emergency paid sick leave” created elsewhere in FFCRA would apply to this initial period

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Expanded FMLA

- Before FFCRA, all FMLA leave was unpaid
- Now, after initial 10 days, remaining period of public health emergency leave is paid, up to the full 12 weeks of leave
 - “at least two-thirds of the regular rate” the employee would have earned under a normal work schedule

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Expanded FMLA

- Job protection/restoration
 - Employer expected to return employee to same position when leave ends, as with other types of FMLA leave.
 - However, if an employer is unable to immediately reinstate the employee to the same or equivalent position because no such positions exist, the employer must make “reasonable efforts” to contact and reinstate the employee during the year following the conclusion of the leave period

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Emergency Paid Sick Leave

- FFCRA provides 80 hours of paid sick time for full-time employees and prorated leave for part-timers
 - Applies to employers with fewer than 500 employees and government employers
 - Employees may be eligible for this leave no matter how long they have been employed

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Emergency Paid Sick Leave

- Leave is available for employee:
 1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 2. Who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis
 4. Caring for an individual subject to 1. or 2. above

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Emergency Paid Sick Leave

- Leave is available for employee:
 5. Caring for child if school or daycare has been closed, or the childcare provider is unavailable, due to COVID-19 precautions
 6. Experiencing any other substantially similar condition specified by Secretary of Health and Human Services in consultation with Secretary of Treasury and Secretary of Labor

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Emergency Paid Sick Leave

- Leave based on employee's own circumstances is paid at the employee's regular rate of pay up to max of \$511 per day and \$5,110 in the aggregate
- Leave to care for another person may be paid at 2/3 of the employee's regular rate of pay up to a maximum of \$200 per day and \$2,000 in the aggregate

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Emergency Paid Sick Leave

- An employee may choose to use paid sick time under this Act before using other paid leave provided by the employer. An employer may not dictate how an employee will do this
- The law also prohibits retaliation and discrimination.

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Emergency Paid Sick Leave

- There will be payroll tax credits to reimburse private sector employers for their cost of providing required paid sick leave and family leave under FFCRA
 - The credits will not be available to public employers
 - Details to come from IRS, etc.

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New York State Law

- Governor's Executive Order 202.6 – Workforce Density Reduction Restrictions
- Benefits for Employees Subject to Ordered Quarantine or Isolation Due to COVID-19

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Executive Order

- On March 18, mandated a 50% reduction in the workforce of private and not-for-profit entities
 - Requirement cut across all departments and shifts of a company and mandates that, by 8 PM on March 20, 2020, only 50% of the total number of employees reporting to a site be allowed to work.
 - On March 19, 75%; on March 20, 100%

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Executive Order

- Exception for “[a]ny essential business”
 - “... health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public...”

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Executive Order

- Other businesses may be deemed essential after requesting an opinion from the Empire State Development Corporation
 - See expanded list and application form at <https://esd.ny.gov/guidance-executive-order-2026>

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Benefits for Employees Subject to Ordered Quarantine/Isolation

- Signed and effective March 18, 2020
 - Applies to employees subject to any order of quarantine or isolation issued by the State of New York, the New York State Department of Health, a local board of health, or any other governmental entity authorized to issue such an order due to COVID-19
 - Statute does not adequately define “order of quarantine or isolation”

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Benefits for Employees Subject to Ordered Quarantine/Isolation

- “Order of quarantine or isolation” also defined in NYS Dept. of Health Guidance
 - “Interim Containment Guidance: Precautionary Quarantine, Mandatory Quarantine and Mandatory Isolation Applicable to all Local Health Departments (LHD)”
 - If not subject to actual official order, not entitled to benefits

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Benefits for Employees Subject to Ordered Quarantine/Isolation

- Status for Required Mandatory Quarantine
 - Person has been in close contact (6 ft.) with someone who is positive, but is not displaying symptoms for COVID-19; or person has traveled to China, Iran, Japan, South Korea or Italy **and is displaying symptoms of COVID-19**

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Benefits for Employees Subject to Ordered Quarantine/Isolation

- Status for Required Mandatory Isolation
 - Person has tested positive for COVID-19, whether or not displaying symptoms for COVID-19
 - LHDs must immediately issue an order for Mandatory Quarantine or Isolation once notified, served on the person impacted

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Benefits for Employees Subject to Ordered Quarantine/Isolation

- Status Required for Precautionary Quarantine
 - Person meets one or more of the following criteria: (i) has traveled to China, Iran, Japan, South Korea or Italy while COVID-19 was prevalent, but is not displaying symptoms; or (ii) has had a proximate exposure to a positive person but has not had direct contact with a positive person and is not displaying symptoms
 - any person LHD believes should be quarantined
 - LHD should contact NYS DOH

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Benefits for Quarantined

- Private sector employers with 10 or less and net income less than \$1 million would be required to provide job protection for the duration of the quarantine order
 - Affected employees may use paid family leave and disability benefits (short-term disability) for the period of quarantine, including wage replacement for their salaries up to \$150,000

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Benefits for Quarantined

- Private sector employers with 11-99 employees, and employers with 10 or fewer employees with net income greater than \$1 million, must provide at least 5 days of paid sick leave and job protection for the duration of the quarantine order
 - Paid family leave and disability benefits (short-term disability) also available

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Benefits for Quarantined

- Private employers with 100 or more employees, as well as all public employers (regardless of number of employees), would be required to provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order
 - PFL also available to private employers (not public unless opted in), SDI also available for private

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Benefits for Quarantined

- Employee not eligible for paid benefits if employee traveled to a country for which CDC has a level 2 or 3 travel notice, the travel was not directed by employer, and employee was provided notice of travel health notice and the limitations of this subdivision of the law before the travel
 - Such an employee could use any accrued leave available
 - After accrued leave exhausted, employee could take unpaid sick leave for duration of the quarantine/isolation

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Benefits for Quarantined

- Benefits not available employees deemed asymptomatic or not yet diagnosed, and who is physically able to work while under the order of quarantine or isolation, whether through remote access or other similar means

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