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## New York State Enacts Law to Provide Sick Leave and Expand Benefit Eligibility for Quarantined Workers

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On March 18, 2020, Governor Andrew Cuomo signed a bill (Act) that immediately provides New York workers subject to quarantine orders as a result of COVID-19 with temporary sick leave (Quarantine Leave).

### Eligibility

To be eligible for Quarantine Leave, employees must be subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order (a Quarantine Order).

However, employees are not eligible for Quarantine Leave if:

1. The employee is asymptomatic or has not been diagnosed with any medical condition; and
2. The employee is physically able to work while under quarantine, whether through remote access or other similar means.

Therefore, if a healthy employee is capable of teleworking, they are ineligible for Quarantine Leave. By contrast, a healthy employee who cannot perform their core job duties remotely remains eligible.

The Act also explicitly excludes from coverage any employee who is subject to a Quarantine Order upon returning from personal, non-business travel to a country for which the Centers for Disease Control and Prevention has a level 2 or level 3 travel health notice if the employee was both provided with notice of the CDC's health notice and notice that taking such travel would exclude them from eligibility for Quarantine Leave. It is unclear what entity should provide these notices. Employees who fit within this exclusion are eligible for unpaid sick leave for the duration of the Quarantine Order and can use any accrued but unused other paid leave provided by the employer to supplement their income.

### Quarantine Leave Benefits

For employees of private employers, the applicable Quarantine Leave benefits vary based on employer size:

Private Employer Size*	Paid Sick Leave Requirement	Unpaid Sick Leave Through End of Quarantine Order	Eligible for New York Paid Family Leave and Disability Benefit
1-10 (<\$1M in net income)**	N/A	Yes	Yes

1-10 (>\$1M in net income)	5 days	Yes	Yes
11-99	5 days	Yes	Yes
100+	14 days	No	No

*\*Private employer size as of January 1, 2020*

*\*\*Net income is measured based on the previous tax year*

After exhausting paid Quarantine Leave, employees of employers with fewer than 100 employees shift to unpaid Quarantine Leave and may also be eligible to apply for paid family leave benefits (PFL) of up to \$840.70 per week and disability benefits of up to \$2,043.92 per week.

An employee may apply for PFL if they are subject to a Quarantine Order, or they are providing care for a minor dependent child who is subject to a Quarantine Order.

Additionally, the Act stipulates that an employee may obtain short term disability benefits if:

1. They are unable to perform their regular duties or other duties offered by an employer;
2. Such inability is a result of a Quarantine Order; and
3. The employee has exhausted all paid sick leave provided by the employer under the Act.

In contrast to the existing regulations, employees can apply for and be granted PFL and disability benefits concurrently, up to a weekly maximum of \$2,884.62.

## **Job Protection**

Any employee who takes Quarantine Leave must be restored to their previous position with the same pay and other terms and conditions of employment. Unlike the recently enacted Families First Coronavirus Response Act (FFCRA), the Act does not contain any exemptions if employer compliance would jeopardize the viability of the business as a going concern.

## **Interplay With the Families First Coronavirus Response Act**

Any employee who takes public health emergency leave or paid sick time through the FFCRA – or any subsequently enacted or promulgated federal benefits related to COVID-19 – may not also receive Quarantine Leave, PFL or disability benefits, unless and only to the extent such benefits exceed the corresponding federal benefits. However, since the FFCRA only covers job-protected leave and pay benefits, it is unlikely to affect employees' eligibility for PFL or disability benefits.

## **What Does This Mean for Employers?**

Private employers must act quickly to prepare for any employee requests for Quarantine Leave. Employers should consult with counsel for questions about the applicability of the Act, the interplay between existing paid time off policies and the benefits under the Act, the applicability of “work-from-home” orders or “shelter in place” orders to the Act, and other compliance issues related to the Act.

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