



TARPEYGROUP

New York Mandates Paid Leave Benefits for Employees Impacted by COVID-19 Quarantine or Isolation Order

On March 18, 2020, New York enacted a new law requiring many employers to provide paid sick leave to employees who are unable to work after being issued a coronavirus-related mandatory or precautionary order of quarantine or isolation by the state, the state department of health, a local board of health, or any other authorized government entity (“New York COVID-19 paid sick leave”). The law also expands employees’ potential eligibility for New York paid family leave benefits (PFL) and disability benefits (DBL) if the employee or the employee’s dependent minor child is subject to such an order.

Whether an employee is entitled to New York COVID-19 paid sick leave or PFL/DBL benefits under the law, and in what amount, is determined based upon employer size, as discussed below. However, an employee is not entitled to any leave or benefits if the employee is asymptomatic or has not yet been diagnosed with any medical condition, and the employee is able work remotely (or otherwise) while complying with the quarantine or isolation order.

COVID-19 Paid Leave Benefits Vary Based Upon Employer Size

Employee entitlement to New York COVID-19 paid sick leave and PFL/DBL benefits varies by employer size. There is no length of service requirement or hours worked threshold to qualify for New York COVID-19 paid sick leave. However, the normal eligibility requirements for New York PFL and DBL benefits apply to employees who seek compensation under those programs for leave related to a quarantine or isolation order.

The New York COVID-19 paid sick leave entitlement is separate from any company-provided PTO that an employee may have available (including general sick leave). An employer cannot require an employee to use

accrued company-provided sick leave or any other accrued sick leave such as leave under the New York City Earned Safe and Sick Time Act prior to taking New York COVID-19 paid sick leave.

The following chart shows the amount of New York COVID-19 paid sick leave available to an employee based upon his or her employer’s size and whether PFL/DBL benefits may be used by the employee during the duration or remainder of the quarantine or isolation order:

Employer Size	NY COVID-19 Paid Sick Leave	PFL & Disability
10 or fewer employees and net income < \$1 M in 2019	No paid sick leave. Unpaid leave until termination of order	Eligible immediately
10 or fewer employees and net income > \$1 M in 2019	5 days of paid sick leave and unpaid leave until termination of order	Eligible following 5 days of paid sick leave
11-99 employees	5 days of paid sick leave and unpaid leave until termination of order	Eligible following 5 days of paid sick leave
100+ employees	14 days of paid sick leave	Not eligible
Public employers	14 days of paid sick leave	Not eligible

Employee on Leave Related to Employee’s Own Quarantine or Isolation Order

An employee who is unable to perform the regular duties of employment or the duties of any other employment that his or her employer may offer, as a result of an order of mandatory or precautionary quarantine or isolation, meets the requirements to receive (1) paid sick leave, (2) PFL benefits, and (3) DBL benefits.

The usual DBL waiting period has been waived so that benefits can be paid out immediately following exhaustion of any available New York COVID-19 paid sick leave. Following use of any available New York COVID-19 paid sick leave, an eligible employee can receive PFL benefits up to 60% of pay capped at \$840.70 per week. If the PFL benefits do not result in full wage replacement, the employee can receive disability benefits to equal his or

her full pay up to a maximum weekly disability benefit of \$2,043.92, for a total of \$2,884.62 per week.

Previously, employees were not permitted to receive DBL and PFL benefits concurrently.

Employee on Leave Related to Minor Child's Quarantine or Isolation Order

An employee who cannot work or telework while caring for a minor child with a quarantine or isolation order issued with respect to the minor child, would be eligible only for PFL benefits. PFL benefits are capped at \$840.70 per week.

Proof of Disability or Need for Family Leave

The mandatory or precautionary order of quarantine or isolation is sufficient proof of disability or proof of need for PFL for purposes of the new law. This is the required paperwork for eligibility and must be attached to the employee's benefits applications.

It is important for employers and employees to keep in mind that state-wide "stay at home" orders are not the type of quarantine or isolation order that would result in a paid leave or benefits entitlement under the New York law. The law appears to be limited to individualized orders directing a particular individual to quarantine or isolate as the result of a specific risk, for example, having traveled to a high-risk region or having had close contact with someone who tested positive for COVID-19.

Special Provisions Where Order Resulted From Employee's Personal Travel to Level 2 or 3 Country

The new law does not allow an employee to use New York COVID-19 paid sick leave or obtain DBL or PFL benefits if:

- The employee's quarantine or isolation order is a result of the employee's personal (non-employment related) travel to a country for which the CDC had issued a level two or three travel health notice; and
- The employee was provided notice of "the travel health notice and the limitations of this subdivision prior to such travel."

Under these circumstances, the employee may use any company-provided PTO until the termination of the quarantine order or is entitled to take unpaid sick leave if the employee does not have company-provided paid leave available.

Interaction with Federal Families First Coronavirus Response Act (FFCRA)

The Families First Coronavirus Response Act will impact the availability of New York COVID-19 paid sick leave and DBL/PFL benefits calculations under the New York law after the FFCRA becomes effective on April 1, 2020. Starting April 1, 2020, benefits under the New York law will be available only to the extent they exceed the leave and benefits provided by the federal law.

The interplay between the federal and state legislation can be complicated and the resulting combination of leave and benefits available to any particular employee will depend on a variety of factors including employer size, employee salary, employee work hours, and eligibility for and prior use of New York DBL and PFL benefits.

Employers with New York employees should work closely with their counsel, insurance carriers, and third-party administrators to ensure their PTO programs and benefits offerings are in sync with the new law.

New York has made available applications for COVID-19 PFL and DBL benefits and answers to FAQs on its Paid Family Leave website. The New York State Labor Department is expected to issue additional guidance and clarification in connection with the new legislation.