



# Labor & Employment Issues Client Alert

Pitta LLP  
For Clients  
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## **NEW YORK STATE POISED TO ENACT PAID LEAVE AND JOB PROTECTION FOR WORKERS AFFECTED BY COVID-19**

On Tuesday, March 17, 2020, New York State Governor Andrew Cuomo announced a three-way agreement with the state legislature on a bill designed to provide sick leave and job protection to New York workers impacted by COVID-19. The legislation is expected to pass this week.

The act provides guaranteed leave for employees subject to 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 governmental entity authorized to issue such order due to COVID-19 (hereinafter, “affected employees”). The New York State Commissioner of Labor is authorized to promulgate any regulations and guidance needed to effectuate the act.

The COVID-19 leave provisions are to become effective immediately once passed by the Legislature and signed by the Governor which is expected this week.

Benefits vary based on the size of the employer:

- For employers with ten (10) or fewer employees with a net income of less than one million dollars in the previous tax year, each affected employee is entitled to unpaid sick leave until the termination of any mandatory or precautionary quarantine or isolation. The Act also grants affected employees “any other benefit as provided by any other provision of law,” expressly including New York State Paid Family Leave (“PFL”) and short-term disability benefits.
- For employers with ten (10) or fewer employees with a net income of greater than one million dollars in the previous tax year, each affected employee is entitled to at least five (5) days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary quarantine or isolation. After the five paid days, employees are eligible for PFL and short-term disability benefits.
- For employers with between eleven (11) and ninety-nine (99) employees, each affected employee is entitled to at least five (5) days of paid sick leave and unpaid leave until the termination of any mandatory or precautionary quarantine or isolation. After the five paid days, employees are eligible for PFL and short-term disability benefits.
- For employers with one hundred (100) or more employees, each affected employee is entitled to at least fourteen (14) days of paid sick leave.
- For public employers, each affected employee or officer is entitled to at least fourteen (14) days of paid sick leave. Affected employees and officers must be compensated at their regular rate of pay.

Leave must be provided without loss of an employee's or officer's accrued sick leave. Upon return from work following leave taken pursuant to the act, affected employees must be restored to the position they previously held, with the same pay and other terms and conditions of employment. Employers are prohibited from discharging, threatening, penalizing, discriminating, or retaliating against an employee because of their use of leave.

Employees are not eligible for paid sick leave benefits under this act if they are subject to quarantine because they elected to travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice. Instead, they can use paid leave provided by their employer or unpaid leave for the duration of the mandatory or precautionary quarantine or isolation. Moreover, the act does not apply to employees that: (1) are deemed asymptomatic or have not been diagnosed with any medical condition; and (2) are physically able to work while under quarantine or isolation, whether through remote access or similar means.

In addition, under the act, if the federal government provides any sick leave or employee benefits, including paid sick leave or paid family leave, the provisions of the State act will apply only to the extent they provide benefits in excess of the benefits provided by the federal government.

The act further explains that it does not diminish or impair the rights of public employees and employers or the rights and benefits which accrue through collective bargaining agreements.

A companion piece of legislation which would mandate paid sick leave on a permanent basis was removed and may be addressed by the Legislature and the Governor in the budget bill.

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