



# Labor & Employment Issues Client Alert

Pitta LLP  
For Clients  
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## **NEW YORK STATE ISSUES GUIDANCE ON COVID-19 PAID LEAVE LAW**

On March 18, 2020, Governor Cuomo signed into law Senate Bill S8091 to provide paid sick leave and job protection for workers during the COVID-19 crisis ("COVID-19 Leave"). This leave is provided in the event that a worker, or their minor children, are 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 government entity duly authorized to issue such order due to COVID-19.

The State has now released a list of frequently asked questions and answers ("FAQs") concerning such topics as benefits and eligibility which will be helpful in interpreting the language of the law.

### **Eligibility**

The State's guidance confirms that employees who may have been subject to an Order that was issued prior to March 18, 2020, but was still effective after that date are eligible for these benefits. The new law only applies to employees subject to an order issued by an authorized agency or public entity and does not apply to workers who chose to self-quarantine.

Additionally, employees who are unable to work due to an employer's closure, regardless of the duration are not eligible for COVID-19 Leave. While these unemployed workers may not be eligible for that leave, they may qualify for NYS Unemployment Insurance.

### **Benefits**

According to the FAQs, the allowed amount of paid sick days (either 5 or 14 depending on the size of the employer and the sector - public or private) are calendar days - not work days.

After COVID-19 Leave benefits are exhausted, if an employee is still subject to a quarantine order, a combination of concurrent disability leave benefits and New York State Paid Family Leave is available to private sector employees of companies that either (i) employ between 11-99 employees or (ii) employ between 1-9 employees and the employer's 2019 net income exceeded \$1 million.

### **Calculation of Benefit**

The amount to be paid to eligible employees must be calculated using the employee's regular rate of pay, which would include other forms of compensation, such as commissions or non-discretionary bonuses. In other words, salaried employees and fixed schedule hourly employees should continue to receive their pay for the applicable period. Employees not paid a fixed wage rate (e.g., hourly, part-time, and commissions salespeople) should be paid by looking at representative period of time to determine an average daily pay rate.

**Comparison to the Federal Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act**

Unlike the recently enacted federal legislation, which goes into effect April 1, 2020, New York State COVID-19 Leave is not available to employees who are unable to work due to the need to care for their minor child because of a school closure or unavailability of a child care provider related to COVID-19.

Nor is New York State COVID-19 Leave available for preventive social distancing if not due to a mandatory or precautionary order of quarantine or isolation. The federal law, which was the subject of a recent client alert discussing the law's provisions and coverage, may provide benefits to employees who are ineligible for COVID-19 Leave.

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