

# New York's New Quarantine Leave Law

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With federal and state legislation constantly evolving, and New York Governor Andrew Cuomo's office issuing multiple executive orders, New York employers are struggling to understand their coronavirus (COVID-19) pandemic paid leave obligations. The key provisions of the state's new Quarantine Leave Law, which went into effect immediately upon signing on March 18, are discussed below.

The State of New York has [published limited guidance](#) and regulations from the Commissioner of Labor are expected.

## Employer Coverage, Eligibility, Qualifying Reasons

All employers, including public employers, have obligations under the Quarantine Leave Law. Public employers include the state, cities, counties, towns, village school districts, and any other public benefit corporation, agency, or instrumentality of governmental power under the laws of the state.

All employees potentially are eligible for leave under the New York State Quarantine Leave Law. Leave rights are triggered if an employee is unable to work because the employee "is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19" when that order is issued by the State of New York, New York Department of Health, Local Board of Health, or any governmental entity duly authorized to issue a mandatory or precautionary order due to COVID-19.

The nature and duration of leave varies based on the size, type and, in some cases, net income of employers.

## When Benefits are *Not* Available

The Quarantine Leave Law does not provide benefits to asymptomatic employees who are subject to quarantine or isolation orders but are able to work remotely.

The law also excludes employees who elect to self-isolate or independently quarantine absent a mandatory or precautionary order from the government. Employees subjected to quarantine or isolation orders due to certain foreign travel (*i.e.*, travel to a country with Centers for Centers for Disease Control and Prevention (CDC) level two or three travel warnings) are denied *if* the travel was unrelated to employment and employees were notified of *both* the travel health warnings and the Quarantine Leave Law's exclusions before such travel.

Employees are not entitled to benefits if businesses initiate closings on their own due to COVID-19 reasons. In those circumstances, employees may apply for unemployment insurance benefits, where the seven-day waiting period has been waived. Somewhat less clear are situations where employers must close or curtail business operations to comply with COVID-19-related orders. While some might view those orders as imposing a mandatory or precautionary quarantine of sorts, pending additional regulatory guidance, it appears employees unable to work remotely in such situations are denied benefits under this law and, instead, are left to apply for unemployment insurance benefits.

## Prohibitions Against Discrimination

Employees who take leave under the new law will be protected against discrimination, discipline, retaliation, discharge, or penalty for having taken leave under the law.

Employees returning from leave are entitled to job restoration at the same pay and terms of conditions of employment.

However, the law does not prohibit employers from making employment decisions or taking actions they otherwise would take regardless of the request or exercise of Quarantine Leave by employees. In

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other words, like most leave laws, the new law does not provide employees any greater benefits or rights than they would have had if they had been actively working. This may be particularly important for employers who may need to reduce the size of their workforce, through terminations or furloughs, due to COVID-19 reasons.

## Monetary Benefits

The amount of benefits available to qualifying employees varies by the size and, in some instances, the net income of the employer.

## Leave Entitlements by Employer Size

Entitlements to leave depend on the size of the employer (also see [our chart](#)):

- *Employers with 100+ employees;*
- *Public employers*

Must provide at least 10 paid sick workdays (a period that covers 14 calendar days) during the applicable quarantine leave period. The law does not require unpaid sick days thereafter, likely because quarantines are presumed to end after 14 calendar days.

- *Employers with 11 to 99 employees;*
- *Employers with 10 or fewer employees (with 2019 net income \$1,000,000+)*

Must provide at least five paid sick workdays during the applicable quarantine leave period, and then unpaid sick days until termination of order.

- *Employers with 10 or fewer employees (with 2019 net income under \$1,000,000)*

Must provide unpaid sick days during the applicable quarantine leave period until termination of order.

## Rate of Pay by Employee Status

During the applicable Quarantine Leave period, employers must pay the amount that the employee would have otherwise received had they been continuing to work for that period based on the amount the employee was scheduled or would have been scheduled had the employer's operations continued in its normal due course. For example, if an employee eligible for Quarantine Leave benefits regularly works a five-day workweek, and is an employee of an employer with more than 100 employees, the employer should pay 10 paid sick days for the 14-calendar-day Quarantine Leave period.

Employees who work a fixed schedule or are paid a salary should simply continue to receive pay for the applicable Quarantine Leave period. For hourly, part-time, commission salespeople, and other employees who are not paid a fixed wage, employers should determine the employee's pay by looking at a representative period to set the employee's average daily pay rate. FAQs issued by the State of New York do not define a "representative period," however, interpretative regulations from the Commissioner of Labor are expected.

Part-time employees should be paid for the number of days/amount of time during the five or 14 calendar day Quarantine Leave period that they would have otherwise received had the employer's operations continued in its normal due course.

## Timing of Quarantine Leave Benefit Payments

There is no waiting period for Quarantine Leave benefits. The benefits are subject to the frequency of pay requirements of Section 191 of the New York Labor Law. Employers should issue Quarantine Leave benefit payments in the paycheck for the applicable pay period for the leave.

## Expanded Short-Term Disability, Paid Family Leave Benefits During Certain Unpaid Quarantine Leave Periods

If employees are not entitled to or have exhausted their employer paid Quarantine Leave benefits, and they are or remain unable to work because of a mandatory or precautionary order of quarantine or isolation due to COVID-19, the law expands an employee's rights to benefits under New York's statutory disability and paid family leave (PFL) laws. Because employers with at least 100 employees already provide paid sick leave for 14 calendar days, the presumed length of a quarantine period, these expansions appear to apply only to employees who work for employers with fewer than 100 employees. The expansions also appear to be temporary, to fulfill the purposes of the Quarantine Leave Law, and do not permanently expand rights to New York disability and paid family leave.

Through these expansions, employees may be eligible for NYPFL benefits concurrently with Short-Term Disability benefits; typically, employees cannot receive both benefits at the same time. The seven-day waiting period for disability benefits also is eliminated for this special benefit expansion. Employees may prove disability by producing a mandatory or precautionary order of quarantine or



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## Practices

Disability, Leave and Health Management  
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isolation.

The potential combined STD/PFL benefit is significant. Eligible employees collecting both Short-Term Disability Benefits and Paid Family Leave Benefits may be entitled to as much as \$2,884.62 per week (approximately \$150,000 annually). The NYPFL cap is \$840.70 per week while disability benefits are capped \$2,043.92 per week.

### Expanded Paid Family Leave Benefits If a Minor Dependent Child is Quarantined

The Quarantine Leave Law also expands the right to benefits under the NYPFL if an employee needs leave to provide care for a minor dependent child of an employee who is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.

The NYPFL expansion to care for minors who are quarantined appears to apply to all employees, regardless of employer size, as long as the employee meets the minimum eligibility requirements under NYPFL.

### Coordinating Leave under New Law and Federal Families First Coronavirus Response Act

In enacting the Quarantine Leave Law, the legislature anticipated passage of potentially overlapping leave benefits under the federal Families First Coronavirus Response Act (FFCRA) or other potential federal legislation. Consequently, the Quarantine Leave Law reduces benefits by the amounts received for overlapping leave reasons under federal law.

As employers with more than 500 employees are not covered under the FFCRA, individuals employed by those large employers should be entitled to full benefits under the Quarantine Leave Law.

Employees of public employers or employers with more than 100 employees, but fewer than 500 employees, will be entitled to the 80 hours (10 workdays) of paid sick time available under the FFCRA, which will run concurrently with the paid leave entitlements of the Quarantine Leave Law. However, while guidance provided by the U.S. Department of Labor suggests FFCRA benefits are not available retroactively, Quarantine Leave benefits are available retroactively if an employee is still currently under a mandatory or precautionary order of quarantine or isolation issued by the state, department of health, local board of health, or government entity, even if that order was issued prior to the enactment of the Quarantine Leave Law.

### Relationship to Company Paid Time Off, Sick Leave

The availability and use of Quarantine Leave cannot result in the loss of any other accrued sick leave under existing policies. Consequently, any accrued but unused paid time off (PTO) should be available to employees once benefits under the Quarantine Leave Law have been exhausted.

If you need guidance on the new law or in handling the complicated issues pertaining to COVID-19, please contact a Jackson Lewis attorney.

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