

## **New York State's Emergency Paid Sick Leave Legislation**

The New York Legislature and Governor Andrew Cuomo have enacted legislation that provides emergency paid sick time in response to the coronavirus, available immediately. The following is a summary of key provisions of the legislation.

### **Emergency Quarantine-Related Paid Sick Leave**

The law's emergency provisions for coronavirus-related quarantines went into effect immediately upon passage.

- **Note: Employees who are eligible for coronavirus-related sick leave under federal law (such as the Families First Coronavirus Response Act) are *not* eligible for sick leave or benefits under New York's emergency sick leave law *except* that if New York's law would provide leave or benefits greater than those under federal law, employees are eligible for the leave or benefits for the difference between what is provided under federal law and New York's law.**
- The emergency sick leave requirements apply only to certain sick leave needs related to quarantine for the coronavirus.
- The law applies to public agencies and private entities regardless of size, but provides different rights depending on the size and other characteristics of the employer.
- **Employees can take time off when they are subject to a specific, *personal* government-issued mandatory or precautionary order of quarantine or isolation. Those who need to care for a minor child who is subject to a specific, *personal* government-issued mandatory or precautionary order of quarantine or isolation also have important protections.**
- Qualifying orders are issued to people who:
  - Have tested positive for COVID-19, whether or not they are displaying symptoms
  - Have been in close contact with someone who has tested positive for COVID-19, but is not displaying symptoms
  - Have been exposed to a person who has tested positive for COVID-19, but have not had direct contact with that person, and are not displaying symptoms
- *Note: Only these specific orders qualify under New York law. A general order to stay home does not qualify.*
- Employees will be entitled to emergency sick time and pay when they are subject to a mandatory or precautionary order of quarantine as follows:
  - Employers with 10 or fewer employees (with net annual income of less than \$1 million in the last tax year):
    - unpaid sick leave for the duration of the quarantine/isolation order
    - special temporary disability insurance (TDI) and paid family leave (PFL) benefits for the duration of the quarantine/isolation, for which employees

Headquarters

40 Worth Street, 10<sup>th</sup> Floor  
New York, NY 10013  
tel: 212.430.5982

info@abetterbalance.org  
abetterbalance.org

Southern Office

2301 21<sup>st</sup> Avenue South, Suite 355  
Nashville, TN 37212  
tel: 615.915.2417

- will need to apply
- Employers with 11 to 99 employees *and* employers of 10 or fewer employees with net annual income of more than \$1 million in the last tax year:
  - paid sick leave for a 5 calendar day period, followed by unpaid sick leave for the remainder of the duration of the quarantine/isolation order
  - special TDI and PFL benefits for the remainder of the duration of the quarantine/isolation order, for which employees will need to apply
- Employers with 100 or more employees:
  - paid sick leave for a 14 calendar day period during the quarantine/isolation order
- Public employers, regardless of size (including school districts):
  - paid sick leave for a 14 calendar day period during the quarantine/isolation order
- Employees eligible for paid sick leave from their employer will receive the amount of pay they would ordinarily have received for the specified period (5 or 14 calendar days).
- The law will provide new, special TDI and PFL benefits as follows:
  - Workers subject to a government-issued order of quarantine or isolation due to COVID-19 who cannot work as a result of that order will be eligible for *both* TDI and PFL benefits *simultaneously*, for which workers will need to apply. This includes PFL benefits when workers themselves, not a family member, are subject to the quarantine or isolation order.
    - PFL benefits will be available at 60% of pay up to a maximum of \$840.70/week.
    - For workers making more than \$840.70/week, TDI benefits will be available *on top of PFL benefits* at 100% of pay for the difference between their PFL benefits and their total pay, up to combined maximum of \$2,884.62/week.
    - For purposes of this provision only, there is no waiting period for TDI benefits. However, workers who are eligible for emergency paid sick leave under this act must exhaust their emergency paid sick leave (*not* other employer-provided leave) prior to using these TDI/PFL benefits.
  - Workers who need leave to provide care for a minor dependent child who is subject to a government-issued order of quarantine or isolation due to COVID-19 may be eligible for *just* emergency PFL benefits (not TDI benefits).
    - PFL benefits will be available at 60% of pay up to a maximum of \$840.70/week.
    - These caregiving benefits are *only* available when the minor dependent child is subject to a specific, personal government-issued order of quarantine or isolation due to COVID-19 (see criteria above). Although

**Headquarters**

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info@abetterbalance.org  
abetterbalance.org

**Southern Office**

2301 21<sup>st</sup> Avenue South, Suite 355  
Nashville, TN 37212  
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benefits may be available when a school or place of care was closed because of a specific order due to a particular exposure risk to COVID-19, benefits are not available if the only thing that has occurred is that the child's school or place of care is closed due to a *general* public health order.

- *Note that all employees receiving paid family leave are entitled to job protection and to continuation of their health insurance while on leave.*
- The special TDI and PFL benefits will be available to all qualifying workers who are currently covered for TDI and PFL, including self-employed workers who have opted in to coverage by purchasing a policy and are eligible for benefits.
- Emergency sick leave is separate from and does not count against employee's accrued sick leave or other accrued paid leave (like PTO).
- The leave and benefits under this act will not be available to workers subject to quarantine who are not sick *and* can safely continue to work during quarantine or isolation, such as by remote access, or to employees whose quarantine was the result of certain non-work travel to certain countries under certain conditions.
- Additionally, pursuant to [Executive Order No. 202.45](#), benefits under this act will not be available to workers who, **after June 25, 2020**, travel (for reasons unrelated to work) to a state within the U.S. with a positive COVID-19 test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a 7-day rolling average, and which the commissioner of the department of health has designated as meeting the aforementioned conditions.
- Emergency sick leave is available for immediate use by the employee, regardless of how long the individual has been employed by the employer.
- *All* covered employees are protected against retaliation for using their rights under the law and are entitled to return to their jobs following leave.