

## KNOW YOUR RIGHTS: COVID-19 Benefits & Leave for New York Workers

There are at least **THREE** possible sources for sick leave pay to care for yourself and your loved ones if you are a New York worker who is still employed. Workers in New York State may be eligible for either state permanent or emergency paid sick leave coverage, under two separate laws. If you work in New York City, you may *also* have important rights under the local paid sick leave law.

If you are unemployed, you may be eligible for unemployment insurance benefits, which have been expanded during this crisis.

Question #1 lays out the three laws that cover sick time benefits during the COVID-19 crisis. The subsequent questions are FAQs about individual situations.

### 1) What are the laws that might give me sick time during this public health emergency?

#### Possible sources of sick time coverage:

##### A. New York State Emergency Sick Leave

You may be eligible for leave and benefits under the NYS Emergency Sick Leave Law if you work for:

- Any public agency (except for the federal government); or
- Private entity, regardless of size

AND

- Qualify for a **mandatory or precautionary** order of quarantine or isolation by the state of New York, the department of health, a local board of health, or a government agency authorized to issue such an order because of COVID-19. To be entitled to this leave, **workers must have documentation showing that they were eligible for an order into mandatory or precautionary quarantine or isolation by an authorized government agency—a general order to stay home is not sufficient.** (NOTE: Although you must be eligible for a mandatory order of quarantine or isolation, New York guidance states you can use a health care provider's advice while you apply for an order due to how overwhelmed departments of health are during this crisis.)
  - You can get a **mandatory order of quarantine** if you have been in close contact with someone who has tested positive for COVID-19 but is not displaying symptoms.
  - You can get a **mandatory order of isolation** if you have tested positive for COVID-19, whether or not you are displaying symptoms.
  - You can get a **precautionary order of quarantine** if you have been exposed to (but have not had direct contact with) a person who has tested positive for COVID-19.

- NOTE: Although you are entitled to a mandatory order of quarantine when you return to the U.S. after return from a trip to a country that has a level 2 or 3 health notice from the Center for Disease Control and Prevention, that reason does not qualify you for New York State Emergency Sick Leave benefits if the trip was personal (non-business) and you were provided notice of the travel health notice. Additionally, pursuant to [Executive Order No. 202.45](#), if **after June 25, 2020**, you travel to a state within the U.S. that has a high positive test rate for COVID-19 and that the commissioner of the department of health has designated as reaching certain specified test rates, you are not eligible for any New York State emergency sick leave benefits unless the travel was for work.
- For information on obtaining an order of quarantine or isolation, see [here](#).

*You are not eligible for leave and benefits under NYS Emergency Sick Leave for the following reasons:*

- you are not sick *and* can work remotely (or can otherwise work safely); or
- the order of quarantine or isolation is no longer in effect.

New York State Emergency Sick Leave covers the length of your quarantine or isolation order by providing sick pay directly from your employer for 5 calendar days if your employer has either between 11 and 99 employees, or 10 or fewer employees with a net annual income of more than \$1 million in the last tax year, and 14 calendar days if your employer has 100 or more employees or a public employer of any size (other than the federal government). If your employer has 10 or fewer employees (and a net income of less than \$1 million) or your quarantine/isolation order goes longer than what is required from your employer, you can apply for special paid family leave/temporary disability insurance benefits to cover the unpaid portion of the order.

**If your minor child is eligible for a mandatory or precautionary order of quarantine or isolation and you must leave work to care for them *and* you work for a private sector (non-government) employer, you can apply for special paid family leave benefits during the period of quarantine or isolation.**

### **B. New York State and New York City Earned Safe & Sick Time Laws**

You may be eligible for sick time if you work as an employee in New York State and do not work for the government, regardless of number of hours worked. Workers throughout the state (including New York City) may be covered under the state law, while those who work in New York City may also have rights under the city's sick time law. Both laws apply if you are a full-time, part-time, or temporary employee.

Both laws allow you to use your sick time if you or a member of your family is sick, hurt, or needs medical attention (including preventive care), including due to COVID-19.

In addition, the New York City sick time law makes it clear that you can use the sick leave if as a result of a public health emergency your business is closed or your child's school or place of care is closed. The New York State sick time law does not allow you to use your sick time because your child's school or daycare is closed unless you would otherwise be able to use your sick time (for example, if you are sick or caring for a sick family member). However, because the law allows you to use sick time for preventive care, depending on the type of health emergency and reasons for closure, you may be able to use your sick time because your work or your child's school is closed.

You can find more information about New York State's sick time law [here](#) and about New York City's sick time law [here](#).

*Note: Prior to the passage of New York State's paid sick time law, Westchester County had its own paid sick time law. The Westchester County law may no longer be in effect.*

**The amount of sick time that you're entitled to depends on the size of your employer.**

- Under both laws, you earn **1 hour** of sick time for every **30 hours** worked. You start earning paid sick time immediately when you start working for your employer and you can use it as soon as it's earned, no matter how long you have been employed.
  - The amount of time you will be able to use will depend on the size of your employer. If your employer has **99 or fewer workers**, you can use up to **40 hours** per year. If your employer has **100 or more workers**, you can use up to **56 hours** per year. If your employer has **fewer than 5 workers** and a net income of less than \$1 million in the last tax year, your sick time may be unpaid—but you can't be fired or punished for taking it.
  - If you work in New York City, you may be covered by both laws—in that case, generally speaking, your sick time under the City and State law will run concurrently (so, for instance, if you take eight hours of sick time, it will count towards both your New York State and New York City sick time allotment).

FREQUENTLY ASKED QUESTIONS ABOUT THESE RIGHTS

**1) I am not currently able to work or telework because I have coronavirus symptoms and am seeking a diagnosis or have been ordered by the government or advised by a health care provider to quarantine. What can I do to receive income while I'm not working?**

**New York State Emergency Sick Leave:** You may be eligible for New York State emergency sick leave **IF** you can obtain a specific, personal government-issued mandatory or precautionary order of quarantine or isolation.

**Note:** A general order to stay home such as the PAUSE order from Governor Cuomo does not qualify. However, if you have been advised to self-isolate by a doctor due to coronavirus symptoms or exposure, you can use that order to obtain emergency paid sick leave benefits and, in the meantime, seek a more formal order of personal quarantine from your board of health or department of health.

If you have personally been issued a mandatory or precautionary order of quarantine or isolation, and the duration of that order is longer than the period for which you can use emergency sick leave (see below at Question 5 for length of emergency sick time benefits under New York State law), then you may be eligible for special **temporary disability and paid family leave** benefits simultaneously. You can only receive special disability or paid family leave benefits if you [apply](#) (typically to your employer's insurance carrier), and can only receive them while the order of quarantine or isolation is in effect. There is no waiting period for special temporary disability benefits. If you are eligible for emergency paid sick leave, then you must exhaust your emergency paid sick leave before using special TDI/PFL benefits (but not other employer provided leave).

**If you take emergency sick leave that is paid by your employer**, your employer will pay you the same amount of pay that you would ordinarily have received during your period of leave. **If you are eligible to receive special disability and paid family leave benefits**, you can receive special paid family leave benefits equal to **67% of your pay, up to \$840.70/week**. In addition, you can receive special disability benefits in addition to special paid family leave for the amount of your wages not covered by special paid family leave, so that you receive benefits equal to **a total of 100% of your pay, up to a total of \$2,884.62/week (combined family leave and disability benefits)**.

**New York State and NYC Paid Safe & Sick Time:** Both of these sick time laws give workers sick time to recover from physical/mental illness or injury, seek medical treatment, or care for a sick family member. Therefore, if you are experiencing symptoms or seeking a medical diagnosis you are entitled to use your sick time. However, if you are eligible for paid sick leave under New York State's emergency sick leave law, you can take that sick leave first because that leave does not replace the sick time you are otherwise entitled to, and you may need your regular sick time later or for other purposes. Domestic workers may have different sick time rights under the law—for more information, click [here](#).

- **If you work in New York State or New York City, you earn 1 hour of sick time for every 30 hours worked. The amount of time you will be able to use will depend on the size of your employer, as explained in Section B above.**

**2) I am not currently able to work or telework because my child’s school or daycare is closed due to a public health crisis related to coronavirus, or my child’s childcare provider is unavailable due to the coronavirus. I am caring for that child. What can I do to receive income while I’m not working?**

**New York State Emergency Sick Leave:** In most cases of school closure, New York State Emergency Sick Leave will not be available because it is necessary that there be a **specific, personal mandatory or precautionary order of quarantine or isolation** for the child you are caring for. However, if there is such an order directed at your child, you *may* be eligible for [paid family leave](#) benefits (not special TDI benefits).

**New York State Paid Safe & Sick Time:** The New York State paid safe & sick time law does not give workers a clear right to use their sick time because their child’s school or daycare is closed unless they would otherwise be able to use their sick time (for example, if they are sick or caring for a sick family member). However, because workers are able to use sick time for preventive care of a physical or mental illness, injury, or health condition, depending on the type of health emergency and reasons for closure, workers may be able to use their sick time because their work or their child’s school is closed. There is no requirement that you use sick time to which you are entitled under New York State’s paid safe & sick time law before accessing the New York State emergency coronavirus sick time. You can find more information on this permanent paid sick time law [here](#).

**NYC Paid Safe & Sick Time:** The New York City Earned Safe and Sick Time Act gives workers the right to earn and use sick time for a variety of sick and safe time purposes whether related to coronavirus or not, including when a worker’s child’s school/place of care is closed due to a public health emergency. **See FAQ #1 for an explanation of sick time that’s available to you under this law.** There is no requirement that you use sick time to which you are entitled under New York City’s paid sick & safe time law before accessing the New York State emergency coronavirus sick time. You can find more information on this permanent paid sick time law [here](#).

**3) I am not currently able to work or telework because I need to care for someone else who has been ordered by the government or advised by a health care provider to quarantine due to coronavirus. What can I do to receive income while I’m not working?**



**New York State Emergency Sick Leave/Special Paid Family Leave:** The New York State Emergency Sick Leave law specifically allows paid family leave to be used to care for a minor dependent child who is personally subject to an order or quarantine or isolation due to COVID-19. Therefore, if the person you are caring for is a minor dependent child and is qualified for such a specific order, you *may* be eligible for **paid family leave** benefits (not special TDI benefits).

**Non-Emergency NYS Paid Family Leave** might be available if the individual you are caring for is a **family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent)**. New York’s Paid Family Leave law provides leave rights that may be useful if you need time off to care for a covered family member. New York’s Paid Family Leave law guarantees covered workers time off to, among other things, care for a seriously ill family member. [A COVID-19 diagnosis is a serious health condition](#) under the Paid Family Leave law. Accordingly, if a family member is diagnosed with COVID-19, covered workers can take New York Paid Family Leave to care for them. For more about New York Paid Family Leave, see [here](#).

**New York State and NYC Paid Safe & Sick Time:** You can use regular paid sick time to care for a **family member** who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care. It can be argued that the need to stay home due to a doctor’s order about your family member’s health condition is covered. See FAQ #1 for an explanation of sick time that’s available for workers in New York State and New York City.

The definition of “family member” for whom you can take leave differs between the two laws:

- Under New York State’s paid safe & sick time law, a family member is a child, spouse, domestic partner, parent, parent or child of a spouse or domestic partner, grandparent, grandchild, or sibling.
- Under New York City’s Earned Safe and Sick Time Act, a family member is a child, spouse, domestic partner, parent, parent or child of a spouse or domestic partner, grandchild, grandparent, or sibling or someone related to you by blood or people whose relationship to you is like a family relationship.

#### **4) I am immunocompromised, but I am not sick. I received an order from my doctor to quarantine. Am I eligible for any leave or benefits?**

**New York State Emergency Sick Leave:** Not available for this purpose.

**New York State and NYC Safe & Sick Time:** Under the regular paid sick time laws in New York State and New York City you can use sick time to care for your own health condition, so

you should be able to use paid sick leave in this situation where a doctor has advised quarantine due to a health condition.

**Additional Laws:** In addition to the laws above, if you are afraid to go to work because you have a disability and may be more at risk than others, please see this page about the [Americans with Disabilities Act](#).

### 5) I qualify for benefits under the NYS Emergency Sick Leave Law. How much emergency sick leave can I use?

You are entitled to leave under the NYS Emergency Sick Leave Law for the duration of your quarantine/isolation order but the way in which you can access the emergency sick leave and how much money you are eligible for depends on the size or nature of your employer:

- If your employer has **10 or fewer employees (with net annual income of less than \$1 million in the last tax year)**, you can apply to receive temporary disability and paid family leave benefits that become payable on your first full day of unpaid quarantine or isolation. Although your employer is not obligated to pay you, you can take unpaid sick leave for the duration of your quarantine or isolation order.
- If your employer has **between 11 and 99 employees or your employer has a net annual income of more than \$1 million**, you can take paid sick leave for a period of 5 calendar days, followed by unpaid sick leave for the remainder of the quarantine/isolation order. If your quarantine or isolation lasts longer than 5 days, you can apply to receive disability and paid family leave benefits that become payable on your first full day of unpaid quarantine or isolation.
- If your employer has **100 or more employees**, you can take paid sick leave for a period of 14 calendar days during the quarantine/isolation order.
- If you work for a **public employer**, such as a school district, you can take paid sick leave for a period of 14 calendar days during the quarantine/isolation order.

**If your minor child is eligible for a mandatory or precautionary order of quarantine or isolation and you must leave work to care for them and you work for a private sector (non-government) employer**, you can apply for special paid family leave benefits during the period of quarantine or isolation.

### 6) Will I be paid differently if I work part-time?

**NYS Emergency Sick Leave:** No. Under the law, part-time employees should be paid the normal rate they would be paid for the amount of time during the 5 or 14 calendar day period, depending on the size of their employer.

**New York State and NYC:** Part time workers will earn the same rate of pay they normally earn for the hours for which they take sick time under the law.

### 7) Is my job safe if I use these benefits?

Under all of these laws, you are entitled to return to your job and are protected against retaliation after you have taken emergency sick leave or have received special disability and paid family leave benefits. You are also entitled to continuation of your health insurance while you are on leave under any of these laws. Any leave under any of these laws should not be counted as an absence that may lead to or result in discipline, discharge, demotion, or any other adverse action.

### 8) Do I have to use accrued sick leave or paid leave separate from emergency coronavirus sick time before I use New York State Emergency Sick Leave?

No, you are not required to use your accrued sick leave or other accrued paid leave that your employer may provide before using New York State Emergency Sick Leave. Emergency sick leave provided by your employer is available for immediate use, regardless of how long you have been employed; if your benefits are provided through special paid family leave or temporary disability benefits, you may need to have been employed by your employer for a certain period of time to qualify. The New York State Emergency Sick Leave Law offers emergency leave and benefits for eligible employees in addition to paid sick leave offered through employers. It does not count against your accrued sick leave or other paid time off. If you are also eligible for paid sick leave through your employer, then you will receive the ordinary amount of pay for the specified period (5 or 14 calendar days).

### 9) When can I start using my sick leave?

**NYS Emergency Sick Leave:** Emergency sick and special family leave or special temporary disability insurance benefits are immediately available if you qualify.

**New York State Paid Safe & Sick Time:** You begin earning sick time as soon as you begin employment and you can use it as soon as it's earned.

**NYC Paid Safe & Sick Time:** You begin earning sick time as soon as you begin employment and you can use it as soon as it's earned. If you know in advance that you will need sick time, your employer can require you to tell him/her up to 7 days before. Otherwise you can be required to tell your employer as soon as possible. If you use sick time for more than 3 work days in a row, your employer can require a note from a health care provider. The note does not need to describe the health issue—only your need for the amount of sick time taken. However, if your



employer requests a doctor's note, they must reimburse you for any fee your health care provider charges you to provide documentation.

### 10) I'm self-employed, am I eligible for leave and benefits in New York?

**Families First Coronavirus Response Act:** Under a federal law called the Families First Coronavirus Response Act, you may be eligible for a tax credit in an amount equal to 100% of a "sick leave equivalent amount" (or 67% for the family care provisions, where only 2/3 of compensation is available) or "family leave equivalent amount" based on days when you were unable to perform work for certain coronavirus-related reasons, up to certain caps and other conditions. This tax credit is available for leaves until March 31, 2021. However, you should know that businesses sometimes call people independent contractors who are actually employees under the law; if this is your situation, you may qualify for protections as an employee under other laws. For more information, click [here](#).

**NYS Emergency Sick Leave:** As a self-employed worker (including freelancers and independent contractors), you can receive special disability and paid family leave benefits if you have opted in to temporary disability insurance and paid family leave coverage by purchasing a policy. However, if you are not already opted into this program, you will not be covered for paid family leave benefits until you have carried coverage for two years unless you have recently (within the last 26 weeks) become self-employed; note that this waiting period does not apply to disability benefits.

You may also be eligible for unemployment benefits through the [NY Department of Labor](#) and the CARES Act (see below).

### 11) I have lost my job because of the coronavirus. What can I do?

If you have lost your job because of COVID-19, you may be eligible for [state unemployment insurance](#) or benefits under the Coronavirus Aid, Relief, and Economic Security ([CARES](#)) Act. The CARES Act includes several provisions dealing with unemployment benefits that will be paid for by the federal government. For more information on the current status of unemployment provisions, see the following [resource](#).

### 12) How can I file a complaint if I think my rights have been violated?

**New York State Emergency Sick Leave Law:** If you believe your rights have been violated by your employer under the New York State Emergency Sick Leave Law, you can file a complaint with the New York State Department of Labor. If you believe an insurance carrier has

wrongfully denied your claim for special paid family leave benefits, you can challenge that denial through arbitration.

**New York State Paid Safe & Sick Time:** If you believe your rights have been violated by your employer under New York State’s paid safe & sick time law, you can file a complaint with the New York State Department of Labor.

**NYC Earned Safe & Sick Time Act:** You have two years after a violation of the law to enforce your rights under the NYC Earned Safe and Sick Time Act by filing a complaint with the New York City Department of Consumer and Worker Protection.

**All covered workers are protected against being fired or punished for using emergency sick leave, New York State or New York City sick time, or special disability and paid family leave benefits.** If you have a problem—or want more information—call A Better Balance’s free legal clinic at **1-833-NEED-ABB**.

*Please note that this fact sheet does not represent an exhaustive overview of the emergency paid sick leave law described, and it does not constitute legal advice. It is possible that additional provisions not described in this fact sheet may apply to a worker’s specific circumstances or category of employment.*