

# NY Expands COVID-19 Paid Leave

Barbara E. Hoey

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On January 20, 2021, the New York State Department of Labor issued new [guidance](#) on the state's COVID-19 sick leave law, which clarifies employees' leave entitlements and expands employers' obligations under the law.

As a reminder, New York's COVID-19 sick leave law provides paid and unpaid sick leave, with access to expanded paid family leave and temporary disability, for employees ordered to quarantine or isolate as a result of COVID-19. The amount of leave and entitlements depends on the size of the employer and its net income. We provided an overview of the law and its requirements [here](#).

So, what's new?

## Multiple Sick Leave Periods

Previous guidance led many to believe employees were only entitled to one bout of paid COVID leave under the law (for employers with over 100 employees, this looked like one 14 day paid period).

However, the new guidance now provides that all New York employees are eligible to take up to **two additional periods** of paid COVID sick leave under the law, if the employee:

- (i) receives a positive diagnostic test for COVID-19 *following* a period of mandatory quarantine or isolation; or
- (ii) continues to test positive for COVID-19 *after* the conclusion of a mandatory period of quarantine or isolation.

The employee is "deemed" subject to a mandatory order of isolation and is *again* entitled to sick leave under the law for a second (or third) period. Unlike the first period of leave, however, the employee must submit documentation from a licensed medical provider or testing facility confirming the positive test results to take the additional leaves.

Assuming this entitles employees to up to three occasions of 14 days of paid leave (42 days total), this amounts to a very significant new entitlement.

Back in June, the Department of Labor and Department of Health issued nearly identical guidance providing additional leave periods for health care employees. This new guidance provides **all** employees with similar leave entitlements previously provided only to health care workers. Interestingly, and like the previous health care worker guidance, the new guidance seems to anticipate the possibility of employees contracting COVID-19 more than once since it provides for *three* periods of leave. We wrote on [this topic](#) back in July.

## **New Leave Entitlement**

Significantly, the guidance also appears to create new leave entitlements even where an employee is not subject to a mandatory order of quarantine or isolation. If an employer mandates an employee, who is not otherwise subject to an order of quarantine or isolation, to remain out of work due to exposure or potential exposure to COVID-19, regardless of whether the exposure happened in the workplace, the employer must continue to pay the employee at the employee's regular rate of pay until either: (i) the employer permits the employee to return to work; or (ii) the employee becomes subject to a mandatory order of quarantine or isolation, at which time the employee is eligible for sick leave under the law.

This new leave entitlement appears to go beyond what is authorized by the statute, as the text of the law only requires up to 14 days of paid leave and only where an employee is subject to a mandatory order of quarantine or isolation.

## **What Should Employers Do?**

While this guidance certainly expands employer obligations and employee rights, the guidance at least provides much needed clarity for employers in the new year. We now know employees cannot qualify for leave under the law for **more than three** orders of quarantine or isolation. Also, unlike the first COVID-19 sick leave period, it is now clear that the second and third orders **must** be based on documented positive COVID-19 test results. The guidance also confirms employees do not need to be retested to end quarantine or isolation.

Equipped with this information, employers should consult with counsel to ensure their COVID-19 sick leave policies and practices comply with this new guidance and any other regulations issued by state or local agencies.