Engage PEO Client Alert:

New York:

Updated Family Leave, Paid and Unpaid Sick Leave

On March 18, New York passed sweeping sick time laws to address the COVID-19 situation in the state which were effective immediately. The law applies to New York employees of any employer with employees in the state.

Paid Family Leave (PFL) was also expanded. See below for details and links to employee forms and sample policies.

Employer Paid Sick Time

As it relates to COVID-19, the new law provides **three tiers of sick time depending on employer size, job protection and maintenance of insurance benefits**. Payment under the new law is done through a mix of paid sick time from the employer and through Short Term Disability and Paid Family Leave Benefits which are funded through existing employee payroll deductions.

The law **guarantees job protected paid leave and maintenance of health benefits to those employees who are subject to a mandatory or precautionary order of quarantine or isolation for COVID-19** which is issued by the state, Department of Health, local board of health or any government entity (that has the authority to do so). Job protection is for the duration of the order regardless of whether the paid portion of the leave is exhausted.

For the employee to be eligible as it relates to COVID-19, the employee cannot telework or work through other means during the pandemic emergency and must be subject to a mandatory or precautionary order of quarantine or isolation for COVID-19 which is issued by the state, Department of Health, local board of health or any government entity (that has the authority to do so).

Businesses must offer pay, time off, job protection and health benefits maintenance to employees who are subject to such an order and cannot telework or work remotely according to the following tiers:

# OF EMPLOYEES ON JAN 1, 2020	NET INCOME IN THE PREVIOUS TAX YEAR	MINIMUM # OF SICK DAYS EMPLOYER MUST PROVIDE PRIOR TO UNPAID LEAVE*
10 or fewer employees	less than $1,000,000.00	Unpaid leave*
	greater than $1,000,000.00	5 paid sick days*
11 and 99 employees	No threshold	5 paid sick days*
100 or more	No threshold	14 paid sick days

*** The above chart shows the minimum number of sick days the employer must provide.** Once this time is exhausted, employees who work for small and medium sized employers may be eligible for New York State Paid Family Leave and disability benefits for up the duration of the order of quarantine or isolation. This time is in addition to other paid time off that the employer already provides.

Employees in cities and counties with their own sick time laws will still have that time off available to them.

The law is also in addition to paid time off already offered by the employer.

PFL Expansion

In an expansion of Paid Family Leave, the law guarantees job protection and maintenance of health benefits to those employees with minor children who are subject to a mandatory or precautionary order of quarantine or isolation for COVID-19 which is issued by the state, Department of Health, local board of health, or any government entity (that has the authority to do so).

For Employees Themselves

Employees who are subject to such an order and work for a small or medium sized employer will also have access to a combination of short-term disability and PFL benefits once they have exhausted the employer paid leave above. The same criteria apply.

For a Minor Child

To be eligible to for Paid Family Leave for a Minor Child who is subject to such an order, the employee *cannot* telework or work through other means during the pandemic emergency and must meet the following criteria:

1. Full-time employees who work a regular schedule of 20 or more hours per week are eligible after 26 consecutive weeks of employment with the employer.
2. Part-time employees who work a regular schedule of less than 20 hours per week are eligible after working for the employer for 175 days, which do not need to be consecutive.

For another family member

Paid time off may also be available under traditional PFL if an individual is caring for a qualifying family member (other than a minor child) who has been diagnosed with COVID-19.

To Apply for PFL Benefits

- **Once the initial portion of the leave is exhausted or if extended need is anticipated, please notify Engage of the name of the employee who needs the new COVID-19 quarantine paperwork by contacting your Engage Benefits Specialist and sending an email to: fmla@engagepeo.com.**

  If you prefer, you can download the forms below and provide them directly to the employee.

  The employee is responsible for the overall filing within 30 days of their first day of PFL. The forms require information for the Employer section which Engage can assist with. In addition, employers will need to attest to the employee's inability to telework or work remotely. Note - this is due to the work not being available, not to the employee's preference or health status. The carrier will be required to respond and pay, if applicable, within 18 days of receipt of the completed application.

  ☐ **Download the forms for the PFL and STD portions of the leave here (**Forms Library).

- **The benefit is based on a similar scheme to the traditional PFL and Disability laws. A person applying for themselves may be eligible for PFL at 60% of their Average Weekly Wage up to a cap of $840.70 a week and Disability Benefits up to a cap of $2,043.92 a week after they exhausted their paid sick leave**.

  Those who are applying for themselves who have already exhausted state disability or state PFL benefits in the last 26 weeks would be ***ineligible*** for this benefit.

- **In the event an individual's minor child is subject to a mandatory or precautionary order of quarantine and the individual has used all mandated sick leave days provided by their employer, they may be eligible for paid family leave only up to a maximum benefit of $840.70.**

  A person who has already taken 10 weeks of PFL during the last 52 weeks would be *ineligible* for the PFL portion of the claim.

For Both Laws

The FAQs issued by the state clarify that this benefit is NOT meant to be used for:

- Preventative social distancing efforts;
- Employees who are physically able to remote work;
- Employees who are asymptomatic or otherwise able to telework or remote work are not eligible for these benefits;
- Employees subject to a quarantine because they voluntarily traveled to a country with a level two or three health notice from the CDC unless travel was at the direction of the employer, and they were provided notice of the travel health notice and the employee knew about this restriction in the new law;
- Office closures or community "shelter-in-place" orders.

The law clarifies that where the Families First Coronavirus Response Act conflicts with this new state law, New York will take an excess position, meaning benefits would be available to the extent they are greater than the federal benefits.

- **The New York Department of Labor guidance recommends providing notice to employees of the law. A template policy is available here** (Forms Library.

The law includes anti-retaliation and anti-discrimination measures for use of this time as well as a complaint process.

Non-COVID-19 Sick Time coming to New York on September 30, 2020.

On April 2, 2020, Governor Cuomo signed a law mandating sick time for NY employees, based on the tiered system. On September 30, 2020, employers will need to allow employees to start accruing sick time based on company size. **Employees will be able to begin using the time on January 1, 2021.**

# of EMPLOYEES	MINIMUM HOURS OF SICK TIME PROVIDED
4 employees or fewer with a net income of $1 million or less in the previous tax year	40 hours unpaid
4 employees or fewer with a net income of *greater* than $1 million in the previous tax year	40 hours paid
5-99 employees	40 hours paid
100 or more employees	56 hours paid

As the state makes more information available, we will continue to update clients.

Important: This guidance is based on current information. Given the ever-evolving nature of the COVID-19 crisis, guidance may change. Please do not hesitate to contact your HR Consultant if you have any questions or concerns.