

New York's COVID-19 Emergency Paid Sick Leave Law

(March 18, 2020 no end date set)

Guidance on Use of COVID-19 Sick Leave – 1-20-2021

The law guarantees job-protected paid leave to workers who are subject to a mandatory or precautionary order of quarantine or isolation for COVID-19 or deemed to be in an order, issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order, or whose minor dependent child is under such an order.

Whether an employee will get financial compensation through a combination of benefits will depend on the employer's size and net worth in the prior year. **These benefits are not available to employees who are able to work through remote access or through other means.**

Who is Eligible?

Employee's Own Quarantine/Isolation

- (a) Any leave taken by an employee from work **when an employee is subject to a mandatory or precautionary order of quarantine or isolation** issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19; or

Quarantine/Isolation of an Employee's Minor Dependent Child

- (b) **To provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation** issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

As of 1/20/2021 Guidance on Use of COVID-19 Sick Leave

Besides an order of quarantine or isolation New York State as of January 20, 2021, the following two circumstances for the employee may apply:

- **Proof of an employee's positive test result** from licensed medical provider or testing facility attesting the employee has tested positive for COVID-19 or
 - **If employer (customer) mandates the employee to remain out of work due to exposure or potential exposure to COVID-19**, regardless of whether such exposure or potential exposure was in the workplace. The pay for the time that the employer requires the employee who is not subject to a mandatory or precautionary order of quarantine to stay out of work is not considered part of or counted against the employee's COVID-19 sick leave entitlement. Once the employee becomes subject to a mandatory or precautionary order of quarantine, the employee will then begin receiving COVID-19 sick leave (paid or unpaid).
- No requirement that employees returning to work test negative for COVID-19 prior to returning
 - There is no explicit prohibition on employers requiring employees to test negative prior to returning to work
 - **An employer who requires such a negative test prior to allowing an employee to return to work** will be required to pay the employee for any period of time following the conclusion of the mandatory or precautionary quarantine and the time the employee is permitted to return to work by the employer.

1. **Employee receives a positive diagnostic test result for COVID-19** and must not report to work (whether or not the employee already received COVID-19 sick leave as required by the law for the first period of quarantine or isolation). The employee **must submit documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19.**
2. **Employee who is subject to an order of quarantine or isolation but continues to test positive for COVID-19** after the end of such quarantine or isolation period must not report to work. The employee is NOT recommended to be tested to discontinue isolation or quarantine. The employee **shall be deemed to be subject to a second mandatory order** of isolation from the Department of Health and shall be entitled to sick leave as required by New York's COVID-19 sick leave law for the second period of isolation. The **employee must submit documentation from a licensed medical provider or testing facility attesting that the employee has received a positive diagnostic test for COVID-19 after completing the initial period of isolation.**
3. **If an employer mandates that an employee** who is NOT otherwise subject to a mandatory or precautionary order of quarantine or isolation to **remain out of work due to exposure or potential exposure to COVID-19**, regardless of whether such exposure or potential exposure was in the workplace. **The employer shall continue to pay the employee at the employee's regular rate of pay until such time as the employer permits the employee to return to work or** the employee becomes subject to a mandatory or precautionary order of quarantine or isolation, at which time the employee shall receive sick leave as required by New York's COVID-19 sick leave law, in accordance with this guidance, **for the period of time the employee is subject to such mandatory or precautionary order of quarantine or isolation.**
4. **In no event shall an employee qualify for sick leave under New York's COVID-19 sick leave law for more than three orders of quarantine or isolation.** The second and third orders must be based on a positive COVID-19 test in accordance with paragraphs 1 and 2 above.

Reasons Employee Would NOT Receive Paid Sick Leave Benefits

The statutory leave and benefits provided under the new law will **only be available to employees who have been officially and formally quarantined or isolated by a local or state government agency or deemed to be an order of quarantine or isolation.** In this regard, these benefits are not available to employees who are:

- In voluntary quarantine or isolation;
- Those who merely fear they have been infected by the virus;
- Those who object to reporting to work for fear of exposure to the virus;
- Those who are placed on layoff or furlough by an employer;
- Those who are physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar mean;
- The law also does not provide any benefits for employees who are home caring for children due to mandatory school closures as a result of the pandemic; and

Reasons Employee Would NOT Receive Paid Sick Leave Benefits or Other Paid Benefits (Cont.)

- The employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of the travel health notice and the limitations of this subdivision prior to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, **unpaid** sick leave shall be provided for the duration of the mandatory or precautionary quarantine or isolation.
- An employee shall not be eligible for paid sick leave benefits or any other paid benefits pursuant to this chapter if such employee voluntarily travels which commences after June 25, 2020 to a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, and which the commissioner of the department of health has designated as meeting these conditions as outlined in the advisory issued pursuant to Executive Order 205, and the travel was not taken as part of the employee's employment or at the direction of the employee's employer. Nonetheless, under these circumstances, employees would still be eligible to use accrued leave provided by the employer or, to the extent that employees don't have enough accrued leave, unpaid leave must be provide for the duration of the quarantine imposed by Executive Order No. 205.

Restricted States

Based upon Governor Cuomo's Executive Order 205, issued June 25, 2020, the following states meet the criteria for required quarantine:

- Alabama
- Arkansas
- Arizona
- Florida
- North Carolina
- South Carolina
- Texas
- Utah

This is based upon a seven-day rolling average, of positive tests in excess of 10%, or number of positive cases exceeding 10 per 100,000 residents.

Please check the New York website for any more states that may be added:

<https://coronavirus.health.ny.gov/covid-19-travel-advisory>

Amount of Paid Sick Leave

As of 1/20/2021

Limited to no more than three orders of quarantine or isolation of paid emergency paid sick leave (paid for each leave 14 consecutive calendar days that the employee would have normally worked) at the employee's regular rate of pay. The second and third orders must be based on a positive COVID-19 test for the employee.

Employer Size (as of 1/1/2020)	Employer Paid Sick Leave	Comments
One hundred or more (100+) employees	Fourteen (14) consecutive calendar days* of paid sick leave at your regular rate of pay for a COVID-19-related quarantine, which should cover the period of an order of mandatory or precautionary quarantine or isolation. You will have job protection for the duration of the quarantine.	No eligibility for Emergency Paid Family and New York Disability.

* The number of paid days is calendar days, and the pay required should represent the amount of money that the employee would have otherwise received for the 14-day period.

At what rate of pay does leave need to be paid?

For the applicable 14 consecutive calendar day leave period, employers must pay the amount that the worker would have otherwise received had they been continuing to work for that period based upon the amount that the employee was scheduled or would have been scheduled had the employer's operations continued in its normal due course.

Employees who work a fixed schedule or are paid a salary should simply continue to receive pay for the applicable period.

For hourly, part-time, commissions salespeople, and other employees who are not paid a fixed wage, employers should determine the employee's pay by looking at a representative period of time to set the employee's average daily pay rate.

How many days of leave are part-time employees required to be paid for?

Part-time employees should be paid for the number of days/amount of time during quarantine or isolation period that they are required to receive pay that they would have otherwise received had the employer's operations continued in its normal due course.

Required Documentation

- Mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any government entity duly authorized to issue such order due to COVID-19.
- Proof of employee's positive test results from licensed medical provider or testing facility attesting the employee has tested positive for COVID-19, or

- Proof that the employer (customer) mandates the employee to remain out of work due to exposure or potential exposure to COVID-19.

New York City (live or work in NYC) Streamlines Process for Obtaining Emergency Sick Leave Pay

As of 4-19-2020, New York City is making it easier for employees to qualify for COVID-19-related sick leave. The Commissioner of Health and Mental Hygiene issued a blanket order of isolation for all people who work or reside in New York City who meet the qualifications for mandatory isolation orders related to COVID-19. This Order will allow these individuals to qualify immediately under New York's Emergency Paid Sick Leave.

To make it easier for to receive paid sick leave under the NY EPSL, the New York City Commissioner for Health and Mental Hygiene issued an Order requiring mandatory isolation for those who have tested positive for COVID-19 or have symptoms of COVID-19 and were in contact with someone who tested positive for or had symptoms of COVID-19. Such individuals can use a streamlined process set forth in the Order to claim paid sick leave from their employer.

The FAQs identify several different scenarios that qualify as having contact with a known COVID-19 case, including:

1. Sharing the same household with a person who has tested positive for COVID-19 or presumed to have COVID-19;
2. Having direct physical contact with a person who has tested positive for COVID-19 or presumed to have COVID-19;
3. Having direct contact with infectious secretions (for example, being coughed on or touching a used paper tissue with a bare hand) of a person who has tested positive for COVID-19 or is presumed to have COVID-19;
4. Having contact, either by being within six feet for about 10 minutes or being in the same enclosed space for a sustained period, with a person who has tested positive for COVID-19 or is presumed to have COVID-19;
5. Travel from a country the Centers for Disease Control and Prevention (CDC) has recognized as a "hotspot" for COVID-19 and has issued a level 2, 3 or 4 travel advisory, or traveling on a cruise ship.

Notably, the New York City FAQs make clear that the Order does **not** apply to those employees who are not sick but have a "friend/neighbor/colleague or someone in [their] household" that tested positive COVID-19. If an employee lives with or has otherwise been in close contact (i.e. within six feet of that individual for a sustained period of time, such as 10 minutes) with a person who tested positive for COVID-19 or is experiencing or has recently experienced COVID-19 symptoms, and that employee is therefore required to quarantine, the FAQs direct the employee to call the NYC Health Department to request an individual quarantine order. Such an individual may still be eligible for NY EPSL but cannot use this Order to claim paid sick leave from their employer.

What Is the Streamlined Process To Obtain Sick Leave Pay (New York City)?

Attached to the Commissioner's Order are three separate appendices (Appendix A, B and C); Appendix A applies to health care workers; Appendix B applies to essential employees that are not health care workers; and Appendix C applies to nonessential workers.

To claim emergency sick leave, the employee must fill out the applicable Appendix, gather the information described in the Appendix, and submit the completed Appendix and accompanying documentation to their respective employer. Additionally, the employee must affirm that the statements made in the Appendix are true and accurate to the best of the employee's knowledge.

While employees filling out Appendices A and B must submit documentation showing that isolation is or was necessary, those filling out Appendix C must submit such documentation only if it is available.

Job Protection

Upon return to work following leave taken pursuant to this act, an employee shall be restored by his or her employer to the position of employment held by the employee prior to any leave taken pursuant to this act with the same pay and other terms and conditions of employment.

However, the law permits an employer to take personnel action that would have been taken regardless of the employee's request for leave or use of leave under this law.

No Discrimination or Retaliation

No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has taken leave.

Miscellaneous

Leave benefits are in addition to any sick leave or paid time off already provided by the employer, and employers are prohibited from charging any employee's existing balance of accrued paid time off for this purpose.

Employee Eligibility for New York Paid Family Leave (for taking off for minor dependent child)

	When Employee Will be Eligible to Take PFL	Comments
Full-time Employee	An employee regularly scheduled to work at least 20 hours per week is eligible to take PFL after he/she has been employed with the Company for 26 consecutive work weeks.	If they have not worked 26 weeks for the Company and start regularly working less than 20 hours per week for that covered employer, they will become eligible after 175 days worked.
Part-time Employee	An employee regularly scheduled to work less than 20 hours per week is eligible to take PFL after working for the Company for 175 days.	

Note: Time spent on paid time off or vacation will count towards an employee's eligibility determination, provided deductions were taken during that period of paid time off or vacation. However, time that an employee spends on NYS disability leave or unpaid leave will not be counted towards an employee's eligibility determination.

Paid Family Leave - available for the care of a minor dependent child under a qualifying quarantine or isolation order "Quarantine Order," regardless of the employer's size.

On April 29, the New York Workers' Compensation Board (WCB) communicated for the first time that the new COVID PFL benefits, effective March 18, 2020, are available for the care of a minor dependent child under a qualifying quarantine or isolation order "Quarantine Order," regardless of the employer's size.

Under the new COVID law, an employee working for an employer with 100+ employees:

- May be entitled to COVID PFL benefits for the care of a minor dependent child who is subject to a Quarantine Order, and
- May be entitled to 14 days of NY COVID Paid Sick Leave based on their own Quarantine Order but would not be entitled to COVID PFL/DBL benefits based on their own Quarantine Order. Employer administered and employer paid.

How to File a Paid Family Leave Claim for the Care of a Minor Dependent Child Under a Qualifying Quarantine or Isolation Order “Quarantine Order”

If eligible, to apply for Paid Family Leave for the care of a minor dependent child under a qualifying quarantine or isolation order “Quarantine Order,” follow these steps:

1. First, you must notify your employer (through the Benefits Department at benefitsdepartment@aleroninc.com or benefitsdepartment@sdintl.com or by calling 1-800-568-8310) as soon as possible.
2. The Benefits Department will provide you with the “File a Claim with Confidence” brochure with includes information on how to file your claim directly with our insurance carrier, the Hartford. File your claim within 30 days.
3. We are set up with the Hartford with a Telephonic claims process. The claim is started via telephone by calling the **Hartford at 1-800-549-6514**, 8 am to 9 pm EST Monday through Friday.
4. Hartford will email an employer certification report to the Benefit Department to obtain the information they need from the employer.
5. The claimant (i.e., employee) is sent a Paid Family Leave form (claim) specific to the Paid Family Leave type for the employee to complete. This can be emailed or mailed to the claimant based on their preference. The claimant is responsible for returning the completed information and any supporting documentation (e.g., copy of the quarantine order) directly to the Hartford.
6. The insurance carrier must pay or deny your request within 18 calendar days of receiving the completed request.

OBTAINING AN ORDER

For Mandatory or Precautionary Quarantine Under Governor Cuomo's New COVID-19 Paid Sick Leave Law



The law provides guaranteed job protection and paid leave for New York employees who are unable to work while subject to a COVID-19 precautionary or mandatory order of quarantine.

What Employees Need to Do

To get an order of precautionary or mandatory order of quarantine or isolation due to COVID-19, you should contact your Local Health Department (LHD). You can search for your LHD on the New York State Department of Health website at https://www.health.ny.gov/contact/contact_information/. LHDs should provide written orders in a timely manner.

If your LHD is unable to *immediately* provide you with an order:

1. Submit documentation from a licensed medical provider that has treated you, attesting (as described below under "DOCUMENTATION GUIDANCE") that you qualify for the order; AND
2. Follow up with your LHD to obtain the order and submit it to ~~your insurance carrier~~ as soon as it is available. LHDs must provide requested orders within 30 days.

the Benefits Department
at 716-817-5253
(e-fax)

DOCUMENTATION GUIDANCE

The documentation from your licensed medical provider must include:

- If you are subject to Mandatory Isolation, an attestation that you meet one or more of the following criteria:
 1. You have tested positive for COVID-19; OR
 2. Testing is currently unavailable to you, but you are symptomatic and have had contact with a known COVID-19 case.
- If you are subject to Mandatory Quarantine, an attestation that you meet one or more of the following criteria:
 1. You have been in close contact with someone who has tested positive for COVID-19 or is currently in mandatory isolation; OR
 2. You are symptomatic and have returned within the past 14-days from a country designated with a level 2, 3, or 4 advisory for COVID-19.
- If you are subject to a Precautionary Quarantine, an attestation that you meet one or more of the following criteria:
 1. You are asymptomatic and have returned within the past 14-days from a country designated with a level 2,3 or 4 advisory for COVID-19; OR
 2. You have been determined to have had proximate exposure with someone who has tested positive for COVID-19.

VERIFICATION

Your Paid Family Leave carrier may contact you to verify the information you provide as part of your claim.

DENIALS OF CLAIMS

If you do not follow the steps described above, your carrier may deny your claim for Paid Family Leave.

For more information on the new legislation, visit <https://www.ny.gov/COVIDpaysickleave>.

What Employers Need to Know

If you send employees home on a precautionary quarantine, they are entitled to job protection, COVID-19 sick leave and/or paid benefits through your Paid Family Leave, and disability benefits insurance provider for the duration of their quarantine, provided they follow the process noted above.

For additional information about COVID-19, please visit the New York State Department of Health's coronavirus website at <https://coronavirus.health.ny.gov/home>.