

1. If the employee is able to telework/work remotely and the employer permits the employee to work remotely, is that employee eligible to receive any paid time off under the New York or federal sick and/or leave of absence laws?

While additional regulations are forthcoming, based on the review of the text of the statutes, it appears the employees who are able to telework and the employer permits them to do so, will not be eligible for any compensation under the New York and Federal Emergency Paid Sick Leave Laws and the federal FMLA Expansion Act. While we continue to monitor any new developments, including regulations, on this issue, this is our initial opinion based strictly on the text of the statutes. Please note, the employers must compensate any employee who works remotely for every hour worked in compliance with the New York State and federal wage and hour laws.

2. I am a New York employer with 11-99 employees; what are my obligations under the new New York and federal emergency paid sick leave and leave of absence laws?

All NY employers must immediately start complying with the New York Emergency Paid Sick Leave Law (“NY Law”). NY Law provides job-protected leave for all employees who are unable to work because they are subject to mandatory or precautionary order of quarantine or isolation issued by NY State, department of health, local board of health, or any governmental entity authorized to issue such order due to COVID-19. While additional regulations are forthcoming, Governor Cuomo’s banning non-essential employees from reporting to work, as well as the numerous State, City and municipal orders closing public schools will most likely qualify as the “mandatory or precautionary order of quarantine or isolation” triggering the protections of NY Law.

Employees who are NOT covered by NY Law and therefore **ineligible to receive benefits** under same are the employees who show no symptoms or have not been diagnosed with a medical condition AND who are able to work (including telecommuting). Therefore, if you have employees who have not been diagnosed and are able to work (including being able to telecommute), **you need not provide them with any paid benefits under NY Law.**

For those employees who have been diagnosed with a medical condition or show symptoms AND are unable to work (including being unable to telecommute), you must provide them with **5 paid sick days effective immediately** followed by job protected unpaid leave. Note, paid sick days under NY Law is in addition to any existing accrued paid time off the employees may have.

Please also note after the employees have exhausted the 5 paid sick days, they may be eligible to apply for short-term disability and/or Paid Family Leave benefits, which requests should be directed to the employer’s disability insurance provider.

Importantly, emergency paid sick leave provision has also been enacted under federal law (“Federal Law”) which becomes effective on or about April 2, 2020. Under the Federal Law, all employers with less than 500 employees must provide job-protected leave to any employee **regardless of the length of employment** provided the employee is **unable to work or telework** for the following reasons:

1. Employee subject to federal, state or local quarantine or isolation related to COVID-19;
2. Employee was advised to self-quarantine by healthcare provider related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
4. Employee is caring for an individual subject to an order in (1) or has been advised as per (2); and
5. The employee is caring for a child if school or place of care closed, or childcare provider unavailable due to COVID-19 precautions.

The employees who fall under one or more of the above categories must receive compensation for 80 hours if they are full-time employees, and compensation for average number of hours a part-time employee would have worked over a 2-week period. Notably, while the employees who qualify for leave based on (1), (2) and (3) above must be compensated at their regular rates (maximum of \$511 per day and \$5,100 total) and those individuals who qualify under (4) and (5), may be compensated only two-thirds of their regular rate of pay (maximum of \$200 per day and \$2,000) total.

Similar to NY Law, employees who are able to telework are likely not eligible to receive paid benefits under Federal Law.

In sum, after the eligible employees have exhausted their 5 days of paid sick leave under NY Law, they will become eligible effective approximately April 2, 2020 to receive under Federal Law compensation for additional 80 hours (if they are full-time employees) or equivalent to average number of hours over a 2-week period (if they are part-time employees).

Finally, the employees who have been employed for at least 30 days and are unable to work (or telework) due to the need to care for a child if school or place of care closed, or childcare provider unavailable due to public health emergency, such employees may be entitled to receive 12 weeks of job protected leave under federal Family and Medical Leave Expansion Act ("FMLA Expansion"), while the initial 10 days of FMLA Expansion leave are unpaid, the remaining leave must be paid at the two-thirds of the employee's regular rate of pay for a maximum of \$200 per day and \$10,000 in total. Eligible employees may receive compensation for the initial 10 day through the Federal Emergency Paid Sick Leave Law (see above).