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New York State Enacts Paid Sick Leave Requirements

By Carolyn D. Richmond, Glenn S. Grindlinger and Jason B. Jendrewski

The New York legislature passed the State Budget on April 2, 2020, which contains a provision amending the New York Labor Law to create a general paid sick leave program for employees. Gov. Andrew Cuomo signed the legislation into law on April 3, 2020. The new requirements are in addition to New York State's sick pay law that was enacted last month to address the COVID-19 crisis.

While guidance is expected from the New York State Department of Labor, employers should begin reviewing the state law's requirements to ensure that their policies are compliant. Existing policies designed to satisfy local and municipal sick leave laws will not necessarily comply with the new requirements.

New York Paid Sick Leave Requirements

The amount of paid sick leave that employers will be required to provide depends on the number of employees that they have during each calendar year.

- Employers with 4 or fewer employees and a net income of \$1 million or less in the prior tax year shall provide employees with a minimum of 5 days of *unpaid* sick leave each calendar year.
- Employers with 4 or fewer employees and a net income greater than \$1 million in the prior tax year shall provide employees with a minimum of 5 days of *paid* sick leave each calendar year.

- Employers with 5 to 99 employees shall provide employees with a minimum of 5 days of *paid* sick leave each calendar year.
- Employers with 100 or more employees shall provide employees with a minimum of 7 days of *paid* sick leave each calendar year.

The law, as written, is unclear about whether the employee threshold counts employees who work solely within the State of New York or if the calculation is determined on some other basis.

Under the state law, an employee may take sick leave for the following reasons:

1. For a mental or physical illness, injury or health condition of such employee or such employee's family member, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;
2. For the diagnosis, care or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or
3. For an absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the

executive law, a family offense, sexual offense, stalking or human trafficking:

- a) To obtain services from a domestic violence shelter, rape crisis center or other services program;
- b) To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
- c) To meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
- d) To file a complaint or domestic incident report with law enforcement;
- e) To meet with a district attorney's office;
- f) To enroll children in a new school; or
- g) To take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

The term **"family member"** is defined under the law to include the employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, as well as the child or parent of an employee's spouse or domestic partner. **"Parent"** is further defined to mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a

minor child. **"Child"** is further defined to mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

Paid Sick Leave Accrual and Use

Employees will begin accruing sick leave as of the effective date of the new law or at the commencement of their employment, whichever is later, at a rate of one hour of sick leave for every 30 hours worked. The accrual requirements take effect 180 days after the bill was signed into law by the governor.

Employers have the option of front-loading the sick leave at the beginning of the calendar year so long as they do not reduce or revoke any leave based on the hours that the employees actually worked.

Employees may begin to take any accrued sick leave starting on January 1, 2021. Employees are permitted to take sick leave in partial-day increments, and employers may set a reasonable minimum increment for the use of sick leave, provided it is no greater than four hours. Employers may not require employees to disclose certain confidential information in order to take the leave. Employees must be paid their regular rate of pay (or the minimum wage, if greater) when taking sick leave.

Upon returning to work, employees shall be restored to the position that they held prior to the sick leave with the same pay and other terms and conditions of employment. As is typical with employment law statutes, there is a provision prohibiting employers from discriminating or retaliating against employees for exercising their rights to sick leave.

Employers must allow employees to carry over any unused sick leave to the following calendar year. However, if an employer has fewer than 100 employees, the employer can limit the use of sick leave to 40 hours per calendar year, and

if an employer has 100 or more employees, the employer can limit the use of sick leave to 56 hours per calendar year. Employers are not required to pay employees for unused sick leave upon their separation from employment.

The law also requires employers to provide information to employees about the amount of sick leave they have accrued and used on three (3) business days' notice. Additionally, employers must ensure that their payroll records show the amount of sick leave provided to each employee for each week worked. Such records must be maintained for at least six years.

Looking Ahead

The new sick leave requirements are separate and apart from any obligations that employers may have under state law currently to provide sick leave when an employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. We anticipate that the New York State Department of Labor will issue regulations and guidance in the coming months, which may address how the two state paid sick leave obligations will interact (if at all) and provide standards regarding employee eligibility and the accrual, use, and payment of paid sick leave.

The state law does not prevent municipalities from enacting and enforcing local laws that meet or exceed the new state requirements; however, any existing paid sick leave benefits provided under local law may not be diminished as a result of the new law. Accordingly, employers in New York City and Westchester County should be particularly mindful of the state paid sick leave requirements and pay close attention to the regulations and guidance that will be issued. At this time, it is unclear whether the New York State paid sick leave requirements are in addition to New York City and Westchester County requirements or

whether employees can take paid sick leave under state and municipal law concurrently. Current employer policies designed to comply with local paid sick leave laws will not necessarily comply with the new state law and may require revision. We anticipate that there will be guidance forthcoming as to how these existing local laws will interact with the new state mandate.

For more information about this alert, please contact Carolyn D. Richmond at crichmond@foxrothschild.com or 212.878.7983, Glenn S. Grindlinger at ggrindlinger@foxrothschild.com or 212.905.2305, Jason B. Jendrewski at jjendrewski@foxrothschild.com or 212.878.7952, or any member of the firm's New York Labor & Employment Group.

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