



### COVID-19 Latest Insights



#### **COVID-19 State Leave Provisions: New York**

*Last Updated April 30, 2020*

Effective March 18, 2020, New York enacted Senate Bill S8091, referred to as Governor Cuomo's New COVID-19 Paid Sick Leave Law (hereafter "the NY Act"), in response to the coronavirus pandemic. All employers that are subject to New York State Workers' Compensation Law are subject to the provisions of the NY Act on behalf of all persons recognized as employees under the state's Workers' Compensation Law.

The NY Act enhances job-protected leave and paid sick leave for a covered employee who is unable to work due to a mandatory or precautionary order of quarantine or isolation imposed on the employee or on the employee's minor child in connection with COVID-19. It also expands the application of existing statutory New York Paid Family Leave (NYPFL) and New York Disability (NYDBL) under specific circumstances related to COVID-19. Benefits under the NY Act are not available to employees who are able to work through remote access or other means.

The benefit enhancements of the NY Act apply at the individual level to an employee if the employee, or the employee's minor child, is "subject to a 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 governmental entity duly authorized to issue such order due to COVID-19" (the NY Act, S8091, Section 2).

Preventive social distancing or "stay-at-home" measures, even if by order of the state (such as New York State on PAUSE), do not constitute quarantine or isolation orders for purposes of the NY Act. Likewise, the NY Act does not cover employees who are unable to work due to their child's school closure, unless the school is closed due to a mandatory or precautionary order of quarantine or isolation issued by the State, department of health, local board of health, or governmental entity. In addition, the NY Act does not cover employees who independently choose to self-quarantine or self-isolate but who are not subject to a duly authorized quarantine or isolation order.

This white paper describes the basic components of the NY Act. It is meant to serve as a guide to the state's provisions at a high level as of the publication. The regulatory environment is changing rapidly in response to the COVID-19 pandemic, and our understanding of the NY Act and its application may change as more information becomes available. Employers with specific questions should work closely with their benefits consultants to address case-specific concerns. Please also see the "Resources" section of the white paper for additional information.

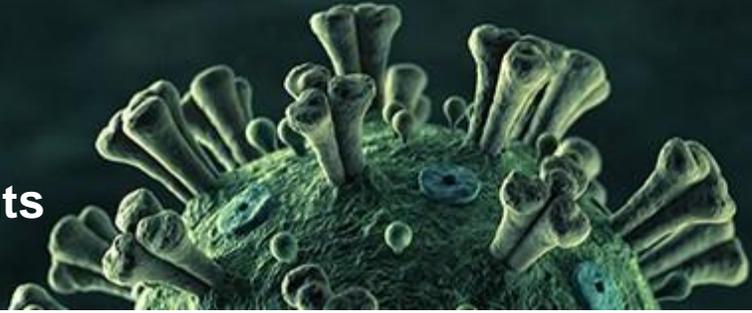
#### **Highlights of the NY Act**

The provisions of the NY Act pertain exclusively to employee absences on and after March 18, 2020, that are directly related to COVID-19 and that are not covered to a greater extent by the federal Families First Coronavirus Response Act (FFCRA) enacted effective April 1, 2020.

**Job protected leave:** All covered employers are required to provide job protected leave to covered employees for absences that are due to orders of quarantine or isolation related to COVID-19. Employers are prohibited from discriminating or retaliating against employees who request or take leave under the provisions of the NY Act.



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**Employer-Paid Sick Days:** Some employers, based on size and net income, are required to provide quantities of employer-paid sick leave as shown in the COVID-19 State Leave Provisions Chart below to employees who are subject to a mandatory order of quarantine or isolation. This employer-paid sick leave must be provided without loss of an employee's other accrued sick leave.

The employer-paid sick leave provision of the NY Act does not apply if the employee's absence is due to a mandatory order of quarantine or isolation pertaining to the employee's minor child. See below under "Statutory Paid Family Leave (NYPFL)" for information about the application of the NY Act to a quarantine/isolation order of an employee's minor child.

The employer-paid sick leave provision of the NY Act also does not apply if the employee is under a mandatory order of quarantine or isolation related to return from personal international travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice, and if the employee was provided notice of the travel health notice prior to such travel.

**Statutory Disability (NYDBL):** The definition of "disability" under the NY Act is expanded to include the inability of an employee to perform the duties of their position, or of another offered position, due to an order of quarantine or isolation issued to the employee (but not to the employee's minor child). The statutory disability waiting period is waived; disability benefits commence immediately following exhaustion of the mandatory employer-paid sick days.

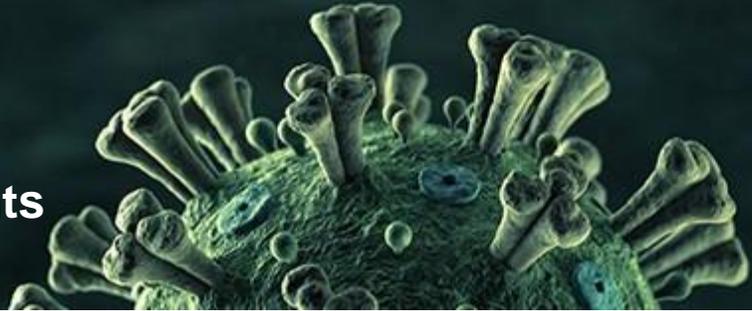
Under the NY Act, the disability benefit formula is linked to NYPFL, and the maximum weekly disability benefit payment is increased to \$2,043.92/week. The disability benefit is calculated as 100% of an employee's regular rate of pay, less the PFL benefit, to a maximum of \$2,043.92/week. When coupled with the maximum PFL benefit of \$840.70/week, the total combined maximum DBL/PFL benefit is \$2,884.62/week, which is the equivalent of \$150,000/year.

**Statutory Paid Family Leave (NYPFL):** Qualifying reasons for PFL under the NY Act are expanded to include leave taken by an employee when either the employee or the employee's minor child is subject to an order of quarantine or isolation related to COVID-19. For orders of quarantine or isolation issued to an employee, PFL runs concurrent with DBL. Under the NY Act, DBL benefit payments are offset by PFL benefit payments, as described above. For an employee, DBL/PFL benefits commence immediately following exhaustion of the mandatory employer-paid sick days. For an employee's minor child, PFL benefits commence immediately upon the effective date of the order of quarantine or isolation.

Under the NY Act, COVID-19 qualifies as a serious health condition for purposes of the family care provisions of PFL; the requirement for continuing treatment by a health care provider is waived.



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#### Employer Administration of the NY Act

**Employer-Paid Sick Days:** Employers that are subject to the employer-paid sick leave provision of the NY Act must permit employees to take any such mandatory sick days upon request; no formal application is required. Employers should work with payroll administrators and vendors as needed to establish appropriate codes for tracking use of the new mandatory sick days.

**Paid Family Leave (NYPFL):** For any portion of a leave under the NY Act that is not covered by employer-paid sick days, employees must submit a Request for Paid Family Leave (Form PFL-1) and the new SCOVID19-Self or CCOVID19-Child form, as applicable, including the order of quarantine/isolation. The New York State Paid Family Leave website includes copies of the forms with detailed submission instructions as well as information about how to obtain an order of quarantine or isolation from a local health department. Employers should note the claims submission deadlines and the appeals process for denied claims.

**NOTE:** Employers can allow employees to use available paid time off balances in lieu of the wage replacement benefits of the NY Act, but they cannot require employees to do so.

**SPECIAL NOTE REGARDING UNEMPLOYMENT BENEFITS:** Nothing in the NJ Acts modifies an employee's eligibility for unemployment benefits under the state's unemployment compensation law or the federal emergency unemployment benefits provisions of the recently-enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act. Employers should review state and federal unemployment provisions to determine whether non-terminated employees who have exhausted paid leave benefits are eligible to collect unemployment benefits during a period of unpaid leave.

#### Interaction with Families First Coronavirus Response Act (FFCRA)

Effective April 1 through December 31, 2020, the federal FFCRA requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The FFCRA does not diminish employees' rights or benefits under any other federal, state, or local law, or under a collective bargaining agreement.

For leaves covered under the NY Act that extend or commence later than March 31, 2020, and that are also covered under the FFCRA, the job protection and salary replacement benefits provided under the NY Act are secondary to any such benefits available under the FFCRA. To the extent that the provisions of the NY Act offer a richer wage replacement benefit than the FFCRA – as will be true under certain fact patterns when the covered employee's rate of pay exceeds \$511/day (\$2,555/week, or \$132,860/year) – the net New York benefit will be the difference between (not the sum of) the calculated benefit under the NY Act and the FFCRA benefit. Under these circumstances, the maximum benefit payable under the NY Act will be \$329.62/week (\$2,884.62 less \$2,555.00).

**NOTE:** The definitions of covered employers and employees under the NY Act and under FFCRA are not identical. For example, the FFCRA does not apply to employers with 500 or more employees, whereas the NY Act applies to employers of all sizes. Likewise, the types of leaves covered under the NY Act and under FFCRA are not identical. Employers should first establish whether the employer is covered under both the state and the federal provisions.

They should next confirm whether the type of leave request is covered under both the state and the federal provisions.



Finally, employers should determine whether an individual employee meets the eligibility criteria under both the state and the federal provisions.

**COVID-19 State Leave Provisions Chart**

		<b>COVID-19 State Leave Provisions (NY) Effective 3/18/2020</b> For Qualified Orders <sup>1</sup> (QOs) that commenced prior to 3/18/2020, benefits under the NY Act commence 3/18/2020 and continue for duration of QO		<b>FFCRA Provisions Effective 4/1/2020</b>
<b>Employer Size/Revenue</b>	<b>Employer-Paid Sick Days</b>	<b>NY Paid Family Leave (PFL)</b>	<b>NY Disability (DBL)</b>	<b>Interaction with Families First Coronavirus Response Act (FFCRA)</b>
<ul style="list-style-type: none"> <li>Size reflects US EEs at 1/1/2020</li> <li>Revenue reflects prior tax year net revenue</li> </ul>	<ul style="list-style-type: none"> <li>In addition to EE's accrued sick time</li> <li>Does not apply to QOs issued to EE's minor child</li> </ul>	<ul style="list-style-type: none"> <li>Subject to default tenure-based eligibility and 12-month utilization limit</li> <li>Applies to QOs issued to EE or EE's minor child</li> </ul>	<ul style="list-style-type: none"> <li>Subject to default tenure-based eligibility and 12-month utilization limit</li> <li>Does not apply to QOs issued to EE's minor child</li> </ul>	<ul style="list-style-type: none"> <li>Applies only if employer and EE are covered under FFCRA</li> </ul>
<11 EEs and Revenue <= \$1M	None	<ul style="list-style-type: none"> <li>60% EE regular rate of pay to max \$840.70/week</li> <li>Effective immediately upon start of QO (EE or minor child) for duration of QO</li> <li>Runs concurrent with DBL (EE only)</li> </ul>	<ul style="list-style-type: none"> <li>100% EE regular rate of pay, less PFL benefit, to max \$2,043.92/week</li> <li>Effective immediately upon start of QO for duration of QO</li> <li>Runs concurrent with PFL</li> </ul>	EE remains eligible for net payment under the NY Act if 1) QO issued to EE (not child), and 2) EE regular rate of pay exceeds \$511/week
<11 EEs and Revenue >\$1M or 11-99 EEs	<ul style="list-style-type: none"> <li>5 calendar days of Employer-Paid Sick Leave at 100% of EE regular rate of pay</li> <li>Effective upon start of QO (EE only)</li> </ul>	<ul style="list-style-type: none"> <li>60% EE regular rate of pay to max \$840.70/week</li> <li>Effective immediately after use of 5 calendar days of Employer-Paid Sick Leave (EE only) or upon start of QO (for minor child)</li> <li>Runs concurrent with DBL (EE only)</li> </ul>	<ul style="list-style-type: none"> <li>100% EE regular rate of pay, less PFL benefit, to max \$2,043.92/week</li> <li>Effective immediately after use of 5 calendar days of Employer-Paid Sick Leave (EE only)</li> <li>Runs concurrent with PFL</li> </ul>	EE remains eligible for net payment under the NY Act if 1) QO issued to EE (not child), and 2) EE regular rate of pay exceeds \$511/week
100+ EEs or Public Employers of Any Size/Revenue	<ul style="list-style-type: none"> <li>14 calendar days of Employer-Paid Sick Leave at 100% of EE regular rate of pay</li> <li>Effective upon start of QO (EE only)</li> </ul>	<ul style="list-style-type: none"> <li>60% EE regular rate of pay to max \$840.70/week</li> <li>Effective immediately upon start of QO (for minor child)</li> <li>Not applicable to QO for EE (compensation covered under Employer-Paid Sick Leave provision)</li> </ul>	<ul style="list-style-type: none"> <li>Not applicable to QO for EE (compensation covered under Employer-Paid Sick Leave provision)</li> <li>Not applicable to QO for minor child (compensation covered only under PFL)</li> </ul>	EE remains eligible for net payment under the NY Act if 1) QO issued to EE (not child), and 2) EE regular rate of pay exceeds \$511/week. <b>NOTE:</b> FFCRA does not apply to employers with 500+ EEs.

<sup>1</sup> For New York, "Qualified Order" (QO) refers to a 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 governmental entity duly authorized to issue such order due to COVID-19.

**Resources**

Federal resource on FFCRA: <https://www.dol.gov/agencies/whd/fmla/pandemic>

NY Legislative Act: [www.nysenate.gov/legislation/bills/2019/s8091](http://www.nysenate.gov/legislation/bills/2019/s8091)

NY PFL website: [www.paidfamilyleave.ny.gov/COVID19](http://www.paidfamilyleave.ny.gov/COVID19)

*This information has been provided as an informational resource for PPI clients and business partners. It is intended to provide general guidance, and is not intended to address specific risk scenarios. Regarding insurance coverage questions, each specific policy must be reviewed in its entirety to determine the extent, if any, of coverage available for the impact of the Coronavirus.*