COVID-19 Paid Leave Obligations
What Restaurants Need to Know

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Tuesday, March 31 | Webinar will begin at 1:30 p.m.
COVID-19

PAID LEAVE OBLIGATIONS

What Restaurants Need to Know
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NEW YORK
PAID SICK LEAVE BENEFIT

- Employee eligibility is very limited.
- Employer’s obligation depends on the number of employees as of January 1, 2020.
- Other important rules for restaurateurs to know about NY Paid Sick Leave
Employee Eligibility

The law only covers an employee who 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.

What does this mean???
Employee Eligibility

Bottom line—New York’s paid sick leave law only covers specific employees…

✓ A mandatory or precautionary order
✓ Order requires a quarantine or isolation
✓ Order issued to employee (not a family member)
✓ Order issued by authorized government entity
EMPLOYER’S OBLIGATION

- All depends on number of employees as of January 1, 2020.
  - Law does not distinguish between full-time and part-time employees
  - All employees are covered
  - All employees are counted

- Three categories of employees covered by the law
EMPLOYER’S OBLIGATION

- **Employer Category #1**: Employers with 10 or fewer employees (as of January 1, 2020) and net income of $1 million or LESS in 2019

- Eligible employee entitled to **unpaid sick leave until order terminates**

- Employee can use:
  - Paid Family Leave Benefits
  - N.Y. Disability Benefits
EMPLOYER’S OBLIGATION

- **Employer Category #2**: Employers with
  - Between 11 and 99 employees; or
  - 10 or fewer employees and net income of $1 million or MORE in 2019

- Eligible employee entitled to **FIVE (5) DAYS** of paid sick leave at regular rate

- Benefit paid by **EMPLOYER**

- Thereafter, employee may be eligible for paid family leave or N.Y. disability benefits
EMPLOYER’S OBLIGATION

- Employer Category #3: Employers with 100 or more employees
- Eligible employee entitled to FOURTEEN (14) DAYS of paid sick leave at regular rate of pay
- Benefit paid by EMPLOYER
- Thereafter, employee may be eligible for paid family leave or N.Y. disability benefits
IMPORTANT EXCEPTION TO N.Y. PAID SICK LEAVE BENEFIT

An employee is NOT eligible for paid sick leave benefits if:

- The individual is an employee subject to a quarantine or isolation order, BUT
- is deemed asymptomatic (i.e., does not have any symptoms of coronavirus), and
- is physically able to perform the work assigned by the employer, whether through remote means or other similar means.
ADDITIONAL ISSUES RELATED TO NEW YORK PAID SICK LEAVE BENEFIT

- Options for employees not qualified for New York paid sick leave
- Rights for returning to work after leave
- No discrimination or retaliation for taking paid sick leave
- Employees returning from non-work related overseas travel are not eligible for paid sick leave
- Federal law exception
NEW PAID SICK LEAVE REQUIREMENTS UNDER FEDERAL LAW
Families First Coronavirus Response Act (FFCRA)

- Effective on April 1, 2020
- Only in effect until December 31, 2020

- TWO Benefits under FFCRA:
  1. Paid Sick Leave Entitlement
  2. Expanded Family & Medical Leave (Expanded FMLA)
PAID SICK LEAVE ENTITLEMENT

- **Eligibility Dates**: 4/1/2020 through 12/31/2020
- **Covered Employer**—employer covered by Fair Labor Standards Act with fewer than 500 employees
- **Covered Employee**—employee covered by Fair Labor Standards Act *(no minimum period of employment requirement)*
  - Except for employees on Expanded FMLA—must be employee for at least 30 days to receive benefit.
Qualifying Reasons for Paid Sick Leave—An employee will be eligible for paid sick time if employee is unable to work or telework because:

1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;
3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
Qualifying Reasons for Paid Sick Leave (continued):

4. Employee is caring for an individual subject to an order described in #1 or self-quarantine as described in #2;

5. Employee is caring for son or daughter* whose school/childcare is closed for COVID-19 reason; or

6. Employee is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services.
PAID SICK LEAVE ENTITLEMENT

- **Duration of Benefits Due to Employees**
  - Full time employees—80 hours of paid sick time.
  - Part time employees—equivalent to the number of hours worked, on average, during a 2-week period

- **Limits on Benefits Due to Employees**
  - For Leave Reasons #1, 2 or 3:
    - 100% of employee’s regular rate of pay
    - Maximum benefit is $511/day and $5,110/total benefit
Limits on Benefits Due to Employees (continued)

- For Leave Reasons #4 or 6
  - 2/3 of employee’s regular rate of pay
  - Maximum benefit is $200/day and $2,000/total benefit

- Special Rules for Leave Reason #5…
PAID SICK LEAVE ENTITLEMENT and EXPANDED FAMILY & MEDICAL LEAVE

For Leave due to Leave Reason #5…

- 2 weeks of paid sick leave benefit; PLUS
- 10 weeks of expanded family & medical leave (FMLA)

TOTAL: 12 workweeks of paid leave
  - 2/3 of employee’s regular rate of pay
  - Maximum benefit is $200/day and $12,000/total benefit

Note: Employee MAY use PTO for first 2 weeks instead of paid sick leave to receive their full pay for those weeks
Small Business Exemption

- Only applies to Leave Reason #5 (schools/childcare)
- Would apply to Paid Sick Leave & Expanded FMLA
- Providing such leave “would jeopardize the viability of the small business as a going concern”
- Authorized Officer must determine and document:
  1. Providing paid benefits would result in business’s expenses and financial obligations exceeding available business revenues and cause small business to cease operating at minimal capacity;
**Small Business Exemption (continued):**

- Authorized Officer must determine and document:
  
  2. Absence of employee(s) requesting leave would entail substantial risk to financial health or operational capabilities of small business because of their specialized skills, knowledge of the business, or responsibilities; **or**
  
  3. Insufficient workers available to perform labor or services provided by employee(s) requesting leave, and these labor or services are needed for small business to operate at minimal capacity.
PAID SICK LEAVE ENTITLEMENT

Additional Rules/Notes for Paid Leave…

- No requirement to find replacement employee
- Relationship to employer-provided paid time off benefits
- Discrimination and retaliation prohibited
- Enforcement delayed until April 17, 2020
- Employer must post notice from US Dep’t of Labor
- Refundable Tax Credits for Paid Leave Benefits
- Work Closure or Layoffs & Paid Leave Benefits
Regular FMLA Obligations on Employer Exist, including continued health insurance during leave

Job Restoration Requirement Not Applicable if:
- Employer has fewer than 25 employees
- Position previously held does not exist due to economic conditions or other changes in operating conditions
- Employer makes reasonable effort to restore employee to equivalent position; and
- Reasonable effort to contact the employee if equivalent position becomes available in year after leave concludes
INFORMATION RESOURCES

- Employer must post notice from US Dep’t of Labor:

- U.S. Dep’t of Labor Q&A on Paid Leave Law:
  https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

- U.S. Dep’t of Labor Website on COVID-19:
  https://www.dol.gov/agencies/whd/pandemic
INFORMATION RESOURCES

- Frequently Asked Questions on New York Paid Sick Leave Benefit & Related Benefits

**Check All of these websites often, as Information is Updated Frequently**
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