



# COVID-19 Paid Leave Obligations What Restaurants Need to Know

Presented by R. Scott DeLuca, Esq., Kavinoky Cook, LLP

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



# COVID-19

## PAID LEAVE OBLIGATIONS

*What Restaurants Need to Know*



kavinoky cook<sup>LLP</sup>

[www.Kavinoky.com](http://www.Kavinoky.com)

*Presented by:*



kavinoky cook<sup>LLP</sup>

SHAPED BY HISTORY. DRIVEN BY CHANGE.

**R. Scott DeLuca, Esq.**

726 Exchange Street, Suite 800

Buffalo, New York 14210

Cellular: (716) 481-8216

Telephone: (716) 845-6000

Facsimile: (716) 845-6474

E-Mail: [rsdeluca@kavinokycook.com](mailto:rsdeluca@kavinokycook.com)



NEW YORK STATE  
RESTAURANT  
ASSOCIATION

*Strategic Partner*





# NEW YORK PAID SICK LEAVE BENEFIT



kavinoky cook<sup>LLP</sup>

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# NEW YORK PAID SICK LEAVE BENEFIT

**New York Paid Sick Leave Benefit  
became available on March 18, 2020.**

- 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

# NEW YORK PAID SICK LEAVE BENEFIT

## 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???

# NEW YORK PAID SICK LEAVE BENEFIT

## 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



kavinoky cook<sup>LLP</sup>

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# FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- 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.



# PAID SICK LEAVE ENTITLEMENT

- **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;

# PAID SICK LEAVE ENTITLEMENT

## ➤ 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

# PAID SICK LEAVE ENTITLEMENT

- **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**

# PAID SICK LEAVE ENTITLEMENT *and* EXPANDED FAMILY & MEDICAL LEAVE

## ➤ 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;

# PAID SICK LEAVE ENTITLEMENT *and* EXPANDED FAMILY & MEDICAL LEAVE

## ➤ 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**



# EXPANDED FAMILY & MEDICAL LEAVE

- **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:  
[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)
- 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

<https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

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

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