



COVID-19 PAID LEAVE OBLIGATIONS II

The Latest on What Restaurants Need to Know

Presented by:

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

Tuesday, August 4 | The webinar will begin at 2 p.m.

Presented by:



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SHAPED BY HISTORY. DRIVEN BY CHANGE.



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AGENDA

- Review of N.Y. Paid Sick Leave (COVID)
- Review of N.Y. Paid Sick Leave (NON-COVID)
- Review of Families First Coronavirus Response Act
- Question and Answer Session

~ NOTICE ~

The information provided in this presentation is NOT legal advice. We cannot provide individualized answers to an employer's particular circumstances. We urge our restaurant operators to consult with retained professionals to secure legal compliance.



N.Y. PAID SICK LEAVE (COVID-RELATED)



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NEW YORK PAID SICK LEAVE BENEFIT

Since March 18, 2020,

N.Y. Paid Sick Leave has been Required.

- *Very limited* employee eligibility
- Amount of benefit depends on the number of employees as of January 1, 2020

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



N.Y. PAID SICK LEAVE (NON-COVID)

N.Y.'S NEW PAID SICK LEAVE REQUIREMENT (NOT COVID-19)

Three Employer Categories...

1. Employers with 4 or fewer employees and net income LESS than \$1 million in prior tax year:
40 hours of UNPAID sick leave per calendar year.
2. Employers with 4 or fewer employees and net income GREATER than \$1 million in prior tax year,
OR Employers with 5 to 99 employees:
40 hours of PAID sick leave per calendar year.
3. Employers with with 100 or more employees:
56 hours of PAID sick leave per calendar year.

N.Y.'S NEW PAID SICK LEAVE REQUIREMENT (NOT COVID-19)

➤ Reasons for Use of Sick Leave Benefit:

1. Mental or physical illness, injury, or health condition of such employee or employee's family member;
2. Diagnosis, care, or treatment of a mental or physical illness, injury or health condition of employee or employee's family; **or**
3. Absence from work when employee or employee's family member has been victim of domestic violence, family offense, sexual offense, stalking, or human trafficking.

N.Y.'S NEW PAID SICK LEAVE REQUIREMENT (NOT COVID-19)

➤ Leave May be Taken For...

- ✓ Family Member: employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner.
- ✓ Parent: biological, foster, step- or adoptive parent, or legal guardian of employee.
- ✓ Child: biological, adopted or foster child, legal ward, or child of employee standing *in loco parentis*.



PAID LEAVE UNDER FAMILIES FIRST CORONAVIRUS RELIEF ACT



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FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Families First Coronavirus Response Act (FFCRA)
 - **Effective since 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

- **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

➤ Additional Rules/Notes for Paid Leave...

- No requirement to find replacement employee
- Relationship to employer-provided paid time off benefits
- Discrimination and retaliation prohibited
- Employer must post notice from US Dep't of Labor
- Refundable Tax Credits for 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



QUESTION & ANSWER SESSION



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