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New York State Department of Health and New York State Department of Labor Guidance on Use of COVID-19 Sick Leave for Health Care Employers

On March 18, 2020, New York State enacted legislation authorizing sick leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The law provides paid and unpaid sick leave with access to expanded paid family leave and temporary disability depending on the size of the employer. All employees, regardless of the size of their employer, are entitled to job protection upon return from leave.

On April 1, 2020, the federal Families First Coronavirus Response Act (FFCRA) went into effect. The FFCRA requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. The FFCRA covers most public employers and private employers with fewer than 500 employees. Unlike the FFCRA, New York's COVID-19 sick leave law applies to all employers, public and private, regardless of size.

Under the federal FFCRA, employers may exempt health care providers, as defined at 29 C.F.R. § 826.30(c)(1), from paid sick leave and expanded family and medical leave. Even if an employer exempts such employees from the paid sick leave and extended family and medical leave under the federal FFCRA, the employer still must follow New York's COVID-19 sick leave law.

Recognizing that health care employees are essential to the fight against COVID-19 but also must have health and job protections, New York's COVID-19 sick leave law for employers of health care employees will be applied as follows:

1. For purposes of New York's COVID-19 sick leave law and this guidance, a "health care employee" is a person employed at a doctor's office, hospital, long-term care facility, outpatient clinic, nursing home, end stage renal disease facility, post-secondary educational institution offering health care instruction, medical school, local health department or agency, assisted living residence, adult care facility, residence for people with developmental disabilities, home health provider, emergency medical services agency, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, including any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.
2. If an employer directs a health care employee not to work or prohibits a health care employee from working because the employer suspects or confirms that the health care employee has been exposed to COVID-19, exhibits symptoms of COVID-19, and/or is diagnosed with COVID-19, the health care employee shall be deemed to be subject to a mandatory order of quarantine from the Department of Health.

- a. Accordingly, the health care employee is entitled to sick leave as required by New York's COVID-19 sick leave law.
 - b. Further, the health care employee does not need to provide the employer with any additional documentation to receive sick leave as required by New York's COVID-19 sick leave law.
3. If a health care employee has tested positive for COVID-19 and/or is symptomatic for COVID-19, the health care employee must not report to work. The health care employee shall be deemed to be subject to a mandatory order of isolation from the Department of Health. However, the health care employee must submit documentation from a licensed medical provider that has treated the health care employee attesting that the health care employee has tested positive for COVID-19 and/or is symptomatic for COVID-19. The health care employee does not need to submit documentation of a positive result if the health care employee's employer gave the health care employee the test for COVID-19 that showed the positive result.
4. Notwithstanding paragraphs 2 and 3, an employer may require, to the extent no other facts unrelated to COVID-19 dictate otherwise, a health care employee who has been exposed to COVID-19 to report to work if the employer can demonstrate a staffing shortage as described in paragraphs 6 and 7 and the health care employee meets all of the following conditions:
 - a. the health care employee is asymptomatic for COVID-19;
 - b. the health care employee has not tested positive for COVID-19; and
 - c. the health care employee's contacts with confirmed or suspected cases of COVID-19 are limited to those that are asymptomatic.
5. Notwithstanding paragraphs 2 and 3, an employer may require, to the extent no other facts unrelated to COVID-19 dictate otherwise, a health care employee who has tested positive for COVID-19 and/or has been symptomatic for COVID-19 to return to work prior to the end of a 14-day quarantine or isolation period if the employer can demonstrate a staffing shortage as described in paragraphs 6 and 7 and only under the following conditions:
 - a. The health care employee with confirmed or suspected COVID-19 must maintain isolation for at least 7 days after onset of symptoms, must be fever-free for at least 72 hours without the use of fever reducing medications, and must have other symptoms improving before returning to work.
 - b. The health care employee who is asymptomatic but who has tested positive for COVID-19 must maintain isolation for at least 7 days after the date of the positive test and, if the employee develops symptoms during that time, the employee must maintain isolation for at least 7 days after developing those symptoms, must be fever-free for at least 72 hours without the use of fever reducing medications, and must have other symptoms improving, before returning to work.
6. For purposes of paragraphs 4 and 5 above, a "staffing shortage" requires that the employer demonstrate the following:
 - a. The employer has a staffing shortage of the type of health care employee that the employer wishes to report to work. For example, if an employer can demonstrate that it has a shortage of respiratory therapists but cannot demonstrate that it has a shortage of nurses, the employer can only require respiratory therapists and not nurses to report to work.
 - b. The employer's staffing shortage would adversely impact the employer's ability to safely provide health care services and the employer has not been able to address the shortage through other means.
7. Once a staffing shortage ends, and an employer can no longer meet the conditions of paragraph 6 above, the employer cannot require a health care employee to report to

work if the health care employee would otherwise qualify for a mandatory or precautionary order of quarantine or isolation as set forth above.

8. Employers of health care employees should continue to follow any Department of Health advisories regarding return to work in all cases.

For additional information about COVID-19, please visit the New York State Department of Health's coronavirus website at <https://coronavirus.health.ny.gov/home>. For additional information about New York's COVID-19 sick leave law, please visit <https://ny.gov/COVIDpaysickleave>.