

New York State Issues Several Employer Mandates Amidst COVID-19 Outbreak

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March 24, 2020

This week, New York State has issued several laws and Executive Orders that seek to address the impact of the COVID-19 outbreak on employees and employers in the State.

Governor Cuomo Issues Directive Mandating 100% of In-Person Workforce Work from Home

On March 20, 2020, Governor Andrew Cuomo ordered that all non-essential businesses and not-for-profit entities must reduce their in-person workforce at any work location by 100%. Governor Cuomo's announcement arrives one day after he issued an Executive Order that mandated that employers reduce their in-person workforce by 75%.

Businesses providing essential services are not subject to Governor Cuomo's current Executive Order. Essential services include:

- Essential health care operations including research and laboratory services;
- Essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals;
- Essential retail including grocery stores and pharmacies;
- Essential services including trash collection, mail and shipping services;
- News media;
- Banks and related financial institutions;
- Providers of basic necessities to economically disadvantaged populations;
- Construction;
- Vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; and
- Vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public.

Businesses seeking an exemption from the State's directive must request an opinion from the Empire State Development Corporation, which will determine whether it is in the best interest of the State to have businesses operate at full capacity.

New York State Passes Paid Sick Leave Law

On March 18, 2020, Governor Cuomo signed into law guaranteed paid sick leave for New York employees impacted by mandatory or precautionary quarantine and isolation orders issued by the State and authorized governmental entities due to the COVID-19 outbreak. The legislation takes effect immediately and provides that:

- Employers with 11 - 99 employees, and employers with 10 or fewer employees and a net income greater than \$1 million must provide at least 5 days of paid sick leave, and unpaid job protected leave for the duration of a quarantine order. Employers must also guarantee their workers access to New York Paid Family Leave and short-term disability benefits for the period of quarantine, such that the State provides replacement for their salaries up to \$2,884.62 per week.

- Employers with 100 or more employees will provide at least 14 days of paid sick leave and guaranteed job protection for the duration of the quarantine order.
- Employers with 10 or fewer employees who do not otherwise meet the \$1 million net income threshold must provide unpaid job protected leave for the duration of a quarantine order and guarantee their workers access to New York Paid Family Leave and short-term disability benefits for the period of quarantine, such that the State provides replacement for their salaries up to \$2,884.62 per week.

Notably, orders to quarantine from an employee's health care provider are not covered, as the law applies only to employees who are subject to a mandatory or precautionary quarantine order issued by the state of New York, the department of health, a local board of health, or a governmental entity authorized to issue such orders for COVID-19 cases. Additionally, the law will not apply in cases in which an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means. Employers must provide the state's quarantine-related leave in addition to any sick leave an employee has accrued. Subject to additional guidance from the State, we do not interpret Governor Cuomo's March 20 Executive Order regarding the closing of all non-essential businesses in the wake of the COVID-19 outbreak to be a "mandatory or precautionary quarantine and isolation order" under the New York State Paid Sick Leave Law.

Other features of the law include anti-discrimination and retaliation provisions that prohibit the discharge or penalization of employees who take leave under the law. Additionally, disability and family leave benefits under the law are payable concurrently to an eligible employee upon the first full day of an unpaid period of mandatory or precautionary order. In light of the passage of the federal government's Families First Coronavirus Response Act, employees in New York are eligible to receive the difference between what the federal legislation provides and the benefits provided under the State's law, where the state leave and/or employee benefits exceed those provided at the federal level.

As the state and federal responses to the COVID-19 outbreak continue to evolve on a daily basis, employers will need to regularly consult with counsel for the latest developments.

If you have questions about these laws, please contact **Jonathan A. Wexler** +1 (212) 407-7732, **Blythe E. Lovinger** +1 (212) 407-7770, **Monique E. Chase** +1 (212) 407-7774 or any other Vedder Price attorney with whom you have worked.

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