

August 17, 2020

REVISED

COMPLIANCE WITH FEDERAL, STATE, AND CITY COVID-19 LEAVE LAWS

Nonprofit employers may be covered by more than one COVID-19 Leave law. This chart provides general information about how the laws intersect and is not legal advice. The New York State law specifically says that the federal law supersedes the state law, unless the state law provides a greater benefit for the employee. In that case, the employee will be entitled to benefits (leave time and pay) available under federal law, plus the difference between the state and federal benefits. Employers with at least 500 employees are exempt from the federal law but must comply with the New York State law.

IMPORTANT: EMPLOYERS MUST POST OR SEND ALL EMPLOYEES NOTICE OF THE FEDERAL SICK LEAVE AND EMERGENCY FAMILY LEAVE LAWS

Access the poster here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

	FEDERAL EMERGENCY PAID SICK LEAVE ACT (EPSLA)	FEDERAL EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA) LEAVE	NYS COVID-19 LEAVE	NYC EARNED SAFE AND SICK TIME ACT
EFFECTIVE DATE	4/1/20-12/31/20	4/1/20-12/31/20	3/18/20	5/5/18
COVERED EMPLOYERS	Fewer than 500 employees as of date leave begins.	Fewer than 500 employees as of date leave begins	All employers	All private employers
ELIGIBLE EMPLOYEES (EE)	All employees regardless of length of service <ul style="list-style-type: none"> • employer may exclude health care 	All employees who have worked for at least 30 calendar days <ul style="list-style-type: none"> • employer may exclude health care providers and 	All employees, except: <ul style="list-style-type: none"> • those who self-quarantine • those who are 	EEs working at least 80 hours per calendar year after 120 days

	<p>providers and emergency responders [NOTE: the health care provider exclusion has been successfully challenged in court; seek legal advice before using]</p> <ul style="list-style-type: none"> employees who have exhausted regular FMLA are eligible 	<p>emergency responders [NOTE: the health care provider exclusion has been successfully challenged in court; seek legal advice before using]</p> <ul style="list-style-type: none"> employees who have exhausted regular FMLA are ineligible Employers with under 50 employees may deny leave in limited situations 	<p>asymptomatic and can work remotely</p> <ul style="list-style-type: none"> those who traveled to a high-risk country for non-business reasons 	<ul style="list-style-type: none"> certain therapists are ineligible
QUALIFYING EVENTS	<p>EE unable to work or telework due to COVID-19 related reasons:</p> <ol style="list-style-type: none"> EE subject to quarantine or isolation order inc. stay at home order health care provider advised EE to self-quarantine EE has symptoms and awaits diagnosis EE cares for individual subject to order as in 1 above EE cares for child under 18 years (or older if disabled) whose school/provider closed/unavailable 	<p>EE unable to work or telework due to need to care for child under 18 years (or older if disabled) whose school/daycare/child care provider is closed/unavailable due to COVID-19 by order of federal, state, or local government</p>	<ul style="list-style-type: none"> Employee is under government mandatory or precautionary order of quarantine or isolation for COVID-19 Employee's minor child's school/daycare/child care provider is under mandatory or precautionary order of quarantine or isolation for COVID-19 	<p>EE's workplace, or the EE's child's school/childcare provider, is closed by order of a public official due to a "Public health emergency" (= declaration made by the commissioner of health and mental hygiene pursuant to subdivision d of section 3.01 of the New York City health code or by the mayor pursuant to section 24 of the executive law)</p>

	6. Other similar situations as may be designated			
DOCUMENTATION	EE must submit signed written request inc. dates and reason for leave and: Reasons 1-4: name of health care provider or govt. entity ordering isolation Reason 5: name of child; name of school/day care/childcare provider; and statement that no other "suitable person" is available to care for child	EE must submit signed written statement with name of child; name of school/day care/childcare provider; and statement that no other "suitable person" is available to care for child	EE must obtain order of quarantine from local public health department. If unable to obtain one immediately, may submit medical provider's certification, then follow up with LPHD's order	Can be requested after absence of more than 3 days
LENGTH OF LEAVE	<ul style="list-style-type: none"> • 80 hours for FT EEs (=regularly work 40 hrs /week) • Average hours worked in two-week period for PT EEs • EE gets only this amount of time off even if changes employers • Does not count toward regular FMLA 12 week maximum leave 	<ul style="list-style-type: none"> • 12 weeks • counts toward regular FMLA 12 week maximum • Employee must be restored to same or equivalent position <ul style="list-style-type: none"> ○ some exceptions for organizations with fewer than 25 employees 	Duration of quarantine	40 hours per twelve-month period
INTERMITTENT LEAVE	<ul style="list-style-type: none"> • Yes if ER (employer) and EE mutually agree, BUT not if EE works onsite (exc for childcare sick leave) 	Yes, if ER and EE mutually agree [NOTE: The requirement that the employer must agree to intermittent leave has been successfully challenged in court;	not addressed in statute	Yes

	[NOTE: Parts of this regulation have been successfully challenged in court; seek legal advice]	seek legal advice]		
AMOUNT PAID	<ul style="list-style-type: none"> • For reasons 1-3, regular pay up to \$511 per day/\$5,110 total • For reasons 4-6, 2/3 regular pay up to \$200/day/\$2,000 total 	<ul style="list-style-type: none"> • First two weeks are unpaid, but see EPSL • Remaining 10 weeks paid at 2/3 regular salary • Capped at \$200/day and \$10,000 total (\$12,000 including EPSL pay) 	<p>Sick pay for EE's own quarantine depends on size of Employer as of 1/1/20:</p> <ul style="list-style-type: none"> • 1-10 EEs : unpaid • 1-10 employees & greater than \$1 million in employer net income (<i>prior tax year</i>): 5 days are paid by employer • 11-99: 5 days are paid by employer • 100 and over: 14 days are paid by employer <p>Pay for child's quarantine:</p> <ul style="list-style-type: none"> • Same as Paid Family Leave 	<ul style="list-style-type: none"> • full salary if employer has at least 5 EEs • unpaid if employer has fewer than 5 EEs
SOURCE OF FUNDS	ER takes refundable tax credit, limited to \$511/day and \$5,110 total or \$200/day and \$10,000 total, even if the employee receives more under employer's policies	ER takes refundable tax credit, limited to \$200/day and \$10,000 total, even if the employee receives more under employer's policies	ER's with fewer than 100 EEs: After 5 days of paid sick leave, employee will be eligible for Paid Family Leave and disability benefits	Paid by employer

			(weekly benefit capped at \$840.70 and \$2,043.92, respectively)	
USE OF EMPLOYER'S PAID SICK AND VACATION TIME	EE has sole option of using EPSLA prior to any leave under ER's policies or federal, state, or local law. This leave does not diminish any other leave under ER's policies	Employee and employer may mutually agree to concurrent use of paid time off under ER's policies	Benefits under law are <i>in addition to</i> sick pay and paid time off under employer's policies, as well as under NYC's ESSTA	May be used in lieu of NYC mandated paid time off
GROUP HEALTH INSURANCE	Must be maintained	Must be maintained	Must be maintained	Must be maintained
ENFORCEMENT	No retaliation Same as for FLSA <ul style="list-style-type: none"> Employees may file complaint with US DOL 	No retaliation or interference Same as for FMLA <ul style="list-style-type: none"> Employees may file complaint with US DOL EE's ineligible for regular FMLA may not file lawsuit 	No retaliation or discrimination <ul style="list-style-type: none"> Employees may file complaint with NYS DOL 	No retaliation or discrimination <ul style="list-style-type: none"> Employees may file complaint with NYC DCA
RECORD KEEPING	Documentation must be retained for 4 years	Documentation must be retained for 4 years	Documentation must be retained for 4 years	Documentation must be retained for 3 years

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