

New York State’s Paid Sick Leave law and Amendments to Statutory Disability and Paid Family Leave laws

March 31, 2020

New York has amended its statutory disability (NY DBL) and paid family leave (NY PFL) laws to mandate paid sick leave and provide additional coverage under NY DBL and NY PFL for certain employees subject to a precautionary or mandatory order of quarantine or isolation issued by the state of New York (NY), the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19 (“COVID-19 Quarantine Order”). The law, which took effect March 18, is intended to address the hardship faced by persons out of work due to a COVID-19 Quarantine Order.

The law requires employers, depending on their size, to offer a number of paid sick days for employees subject to a Quarantine Order, as indicated in the chart below. Please note, all employers must provide job-protected unpaid leave until the end of the Quarantine Order.

Employer Size	COVID-19 Quarantine Order Paid Sick Days	COVID-19 Quarantine Order NY DBL/PFL applicable?
≤10 Employees in total with ≤ \$1 million net 2019 income	0	Yes
≤10 Employees in total with >\$1 million net 2019 income	5	Yes
11-99 Employees in total	5	Yes
≥100 Employees	14	No
All Public Employers	14	No

After any applicable paid sick time has been exhausted, certain employees can file a claim for NY Disability Benefits (DBL) and Paid Family Leave (PFL). **If your employer has fewer than 100 employees, your employees who cannot work due to an individualized quarantine order may be eligible for the New York DBL/PFL Quarantine Order benefits after having used their paid sick days under the new law. For employers of all sizes, employees who cannot work due to their minor child being under an individualized quarantine order may be eligible for the New York PFL Quarantine Order benefits.**

The NY Worker’s Compensation Board (WCB) has advised Sun Life that the size of an employer is determined by counting all employees nationwide, by FEIN, not just employees in New York. The head count should include all full and part-time employees as of January 1, 2020.

For employees who are eligible for these special COVID-19 NY DBL and PFL benefits, the law changes the definition of disability to include time the employee is unable to perform the regular duties of their employment as a result of a COVID-19 Quarantine Order and when the employee exhausts any applicable paid sick leave time, as identified above. While eligible employees have to exhaust paid sick leave required under the act before they can file for DBL, they become immediately eligible and will not be subject to a waiting period for DBL.

The law defines “family leave” under PFL to include any leave taken by an employee from work (1) when an employee is subject to an individual COVID-19 Quarantine Order or (2) to provide care for a minor dependent child of the employee who is subject to a COVID-19 Quarantine Order. Under this amendment, employees may be able to collect both DBL and PFL benefits at the same time, something that is ordinarily prohibited under the law.

If you have New York Paid Family Leave and Disability Benefits Law insurance coverage with us and you are a private employer (not public) with fewer than 100 employees in total, (nationally, by FEIN), rest assured that we have adapted our business practice to accommodate payment for the special COVID-19 Quarantine Order related DBL and PFL benefits.



The law expressly states that benefits are not payable if the employee is asymptomatic or yet to be diagnosed, and physically able to work whether through remote or other means.

To be eligible to receive the COVID-19 Quarantine Order benefits, the employee must file a claim and attach the applicable individualized Quarantine Order. New York has issued guidance about the type of Quarantine Orders that will comply. [That guidance can be accessed here.](#) The Guidance advises that individuals should contact their Local Health Department (LHD) to obtain the Quarantine Order. If the LHD is unable to immediately provide an order, the employee may submit an attestation from a licensed medical provider that has treated the employee or the employee's minor child attesting that the employee or the minor child qualifies for the order. That documentation may be submitted with their request for the COVID-19 Quarantine Order DBL and PFL benefits. The guidance also advises that the employee must follow up with the LHD to obtain the Quarantine Order and they must submit it to their insurance carrier as soon as it is available. The guidance makes clear that to be eligible for the COVID-19 Quarantine Order benefits, the claimant must submit the Quarantine Order within 30 days.

An employee is **not** eligible for the special COVID-19 NY DBL and PFL benefits if they are unable to work for the following reasons:

1. an employee who is unable to work because the Governor or any other government authority has ordered non-essential employees to remain at home and shelter in place;
2. an employer has required an employee to remain at home as a precautionary matter related to COVID-19, and the employee is unable to work from home; or
3. an employee is unable to work because the employee must care for a child whose school or place of child care has been closed because of concerns related to COVID-19 but there is no Quarantine Order.

Benefit payments

The COVID-19 Quarantine Order NY DBL and PFL benefits are payable concurrently and the employee may not collect benefits that exceed \$840.70 in PFL and \$2,043.92 in DBL benefits per week. The NY WCB has advised the PFL benefit, if applicable, will be calculated first and the DBL benefit, if applicable, will be a top up. The aggregate weekly maximum benefit is the lesser of 100% of the employee's average weekly wage from each covered employer or \$2,884.62 per week. These are substantial increases in the amount of benefits that an employee can receive, and a special exception to the ordinary rule that an employee cannot collect both NY DBL and NY PFL benefits at the same time.

Coordination with federal benefits

If an employee is also eligible for the federal emergency COVID-19 paid benefits which become available April 1, 2020, the employee will only be eligible for the COVID-19 Quarantine Order NY DBL and PFL benefits to the extent that they exceed the federal COVID-19 benefits. In summary, the employee can collect the difference between the COVID-19 NY DBL and PFL benefits and the federal COVID-19 benefits.

Unemployment benefits

There is no waiting period for unemployment benefits when an employer is forced to close subject to a reason related to COVID-19 or due to a mandatory order of a governmental entity duly authorized to issue such order to close. The Governor's website suggests that employees who are unable to work for reasons related to COVID-19 that do not qualify under the new paid sick leave and amendments to DBL/PFL may be eligible to apply for unemployment compensation.

This content is not to be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization meets requirements.

Proof of disability or need for family leave for the COVID-19 Quarantine Order benefits

A Quarantine Order itself is proof of disability or need for family leave. For every Paid Family Leave claim, an employee must submit the Request for Paid Family Leave (Form PFL-1). Additionally, depending on the type of leave he or she is taking they will need to submit either the Request for COVID-19 Quarantine Leave for Yourself or the Request for COVID-19 Quarantine Leave for Minor Child. Employees will also need to submit the mandatory or precautionary quarantine or order of isolation issued by the State, department of health, local board of health, or government entity.

See above for New York Guidance for individuals who are unable to immediately provide a Quarantine Order.

“Regular” New York DBL and PFL benefits

Please note that employees may also continue to file for regular NY DBL and NY PFL benefits. The proof and other requirements associated with those regular DBL and PFL claims remain the same as they always have been, as do the amount of the benefits. In that regard, for a regular NY DBL claim, the typical maximum benefits are 50% of an employee’s wages up to \$170 per week. The benefit amount for a “regular” PFL claim is the same as the COVID-19 Quarantine Order PFL benefit payment (60% of the employee’s wages to \$840.70 per week). However, for regular PFL, the benefit is only available for caregiving and is not available for an employee’s own circumstances. Further, under regular DBL and PFL, an employee cannot receive both DBL and PFL benefits at the same time.

On March 31, 2020, the NY Worker’s Compensation Board adopted an emergency revision to its “regular” PFL regulations to state that a diagnosis of COVID-19 qualifies as a serious health condition. The most significant impact of

this regulation is that an employee can obtain regular NY PFL benefits without having to submit a Quarantine Order if the employee’s covered family member is diagnosed with COVID-19. This emergency regulation is in effect for 90 days from March 27, 2020 unless extended.

Right to Restoration and Anti-Discrimination

At the end of the period of leave related to a Quarantine Order, the employee has the right to be restored to the position they held prior to the absence with the same pay and other terms and conditions of employment. The act also includes anti-retaliation and anti-discrimination provisions to protect employees.

Considerations for travelers

Under the law, the special COVID-19 paid benefits are not available to employees who travel to a country which the Centers for Disease Control and Prevention has assigned a level two or three travel health notice when the travel to that country was not taken at the employer’s direction or in the course of employment and if the employee was provided notice of the travel health notice and the limitations on leave prior to such travel. Employees who are excluded coverage for such travel will be eligible to use any accrued employer paid leave, or in the event the employer does not provide leave, unpaid sick leave must be provided for the duration of the mandatory or precautionary quarantine or isolation.

Paid Sick Leave generally – On hold

As drafted, the Act called for the amendment of the NY Labor Law to add Paid Sick leave requirements generally, beyond those related to COVID-19, and new requirements for record-keeping of sick leave to take effect 180 days after passage (September 14, 2020). However, these general Paid Sick Leave requirements were removed from the final legislation signed by the Governor. This initiative is tabled until a later date.

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