HR COMPLIANCE BULLETIN

States Update Employee Leave Requirements for Coronavirus

In response to the coronavirus (COVID-19) pandemic, states have passed new laws and issued new regulations and guidance about employee leave taken for COVID-19 reasons. These provisions are in addition to the federal Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion requirements passed on March 18 as part of the Families First Coronavirus Response Act (FFCRA).

In general, employee leave permitted under new state COVID-19 rules and guidance varies with respect to factors like the employers and employees covered by the leave, the length and purpose of the leave, whether the leave is compensated and at what rate, and whether the leave is provided under a new law or rule, or covered under an existing provision.

This Compliance Bulletin briefly describes new state employee leave provisions and guidance enacted or issued in response to the COVID-19 pandemic, along with links to government resources providing further information. Information about similar measures in select major cities is also included. The document will be updated with additional new employee leave rules in this rapidly changing compliance area.

Action Steps

Employers should monitor the websites of their state departments of labor for new laws, rules and guidance about COVID-19-related employee leave.

Highlights

States are increasingly enacting laws and issuing new rules and guidance on employee leave taken as a result of COVID-19.

State actions on employee leave come in addition to paid employee leave required by the Families First Coronavirus Act passed by Congress.

Key features of new laws and regulations include the length of leave, compensation for leave, and eligibility requirements for leave.

Recommendations

Employers should stay alert to the following actions on the state level:

- New employee leave laws and regulations
- Changes to existing laws and rules on employee leave
- Guidance on the application of existing rules and laws to COVID-19 circumstances

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California

On Nov. 30, 2020, California adopted emergency temporary Cal/OSHA standards on COVID-19 infection prevention that apply to most workers in California **not** covered by Cal/OSHA's Aerosol Transmissible Diseases standard. Among other things, the new standards require employers to exclude employees from the workplace for specified periods if they test positive for or have been exposed to COVID-19, or if they are under an isolation order from a health official. If an employee is accordingly excluded from work and is otherwise "able and available to work," the employer is required to **continue to maintain the employee's "earnings, seniority, and all other employee rights and benefits**," including the employee's right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave benefits for this purpose and consider benefit payments from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers' compensation.

FAQs issued by the California Department of Industrial Relations state that employees unable to work because of COVID-19 symptoms are **not eligible** for exclusion pay and benefits. These employees, however, may be eligible for workers' compensation or state disability insurance benefits. The FAQs also state that employees would typically receive pay for a quarantine period of up to **14 days**. If an employee is out of work for more than a standard quarantine period based on a single exposure or positive test, but still does not meet the regulation's requirements to return to work, that extended quarantine period **may** be an indication that the employee is not able and available to work due to illness. The employee, however, may be eligible for temporary disability or other benefits.

The exclusion pay requirement **does not apply** when the employee is unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission. It also does not apply where the employer demonstrates that the COVID-19 exposure is not work related.

Employers are required to **provide notice** of the employee rights described above to employees who have been excluded from the workplace under the new standard, at the time of exclusion.

The California Department of Industrial Relations has created employer resources about the standard.

A previous law, AB 1867, was in effect from **Sept. 19, 2020, through Dec. 31, 2020**, and closed the gaps in paid sick days in the FFCRA and in Governor Newsom's executive order (later a law) covering food sector workers. The state's Department of Industrial Relations issued FAQs on the now-expired law.

Local Laws

The following entries describe select local leave laws in California, enacted in response to the COVID-19 emergency. Additional localities not listed here (such as San Mateo County, Sonoma County and Santa Rosa) have passed similar measures. Employers should familiarize themselves with the leave laws that apply in their county, city or town.

- Long Beach—Effective May 19, 2020, a Long Beach ordinance imposes a paid sick leave requirement on employers that have 500 or more employees nationally, and that are not required to provide FFCRA emergency paid sick leave. Under the ordinance, full-time employees are entitled to 80 hours of paid leave, and part-time employees are eligible for paid leave in an amount equal to their average number of work hours over a two-week period, for specified COVID-19-related reasons. As with the FFCRA, different rates of compensation apply,

depending on the reason for leave. The ordinance also contains pay caps and employee and employer exceptions, such as for health care worker and emergency responder employees (as defined in the ordinance). Under the terms of the ordinance, every 90 days the city manager reports on whether the ordinance is still necessary.

- Los Angeles—Mayor Eric Garcetti has issued a public order, effective April 10, 2020, and continuing through two weeks after the end of the COVID-19 local emergency, requiring up to 80 hours of supplemental paid sick leave for certain workers for specified COVID-19-related reasons. The order applies to private employers with 500 or more employees within the city of Los Angeles, or 2,000 or more employees within the United States. The order includes employer and employee exemptions, and pay caps apply. The city has issued rules to implement the order.

- Los Angeles County—An urgency ordinance that expired on Dec. 31, 2020, and whose extension is under review, provided employees in unincorporated areas of Los Angeles County 80 hours of supplemental paid sick leave for specific COVID-19-related reasons, retroactive to March 31, 2020. Part-time employees receive paid sick leave equal to their average two weeks' pay. Pay is capped at $511 per day and $5,110 total.

  The ordinance applies to employers with 500 or more employees nationally, but employers covered by the FFCRA or the state order requiring paid leave for food sector employees are exempt. Employees who are emergency responders or health care providers, as defined in the ordinance, are not entitled to the leave.

- Oakland—Under an emergency ordinance passed Jan. 19, 2021, the Oakland City Council amended and extended its original emergency paid sick leave ordinance, which was passed May 12, 2020, and expired Dec. 31, 2020. The new ordinance is retroactive to Dec. 31, 2020, and requires all employers within the city to provide their workers with emergency paid sick leave for specified COVID-19-related reasons, which include being at least 65 years old or at other risk of serious illness from COVID-19 exposure. The law took effect immediately upon passage. Full-time workers receive 80 hours of leave, while part-time workers are entitled to an amount of leave equal to their average work hours over a 14-day period.

  Employers may take a credit towards the leave required in the ordinance for any emergency paid sick leave they provided an employee under the FFCRA or the state supplemental leave requirement (both expired). Pay caps and exemptions, including for small employers (fewer than 50 employees) and health care worker and emergency responder employees, apply.

  The city issued FAQs on the expired ordinance and is expected to issue new FAQs on the extension and amendment.

- Sacramento—Under a city ordinance extended through March 31, 2021, employers must provide employees up to 80 hours of supplemental paid sick leave for specified COVID-19-related purposes. The ordinance applies only to employers that have 500 or more employees nationally and are exempt from FFCRA paid sick leave requirements. Exceptions apply for employees who are emergency responders or health care providers, and employers can use certain employee leave provided for COVID-19 purposes as a credit toward the leave required under the ordinance. As with FFCRA paid sick leave, compensation varies according to the reason for the leave, and daily and aggregate pay caps apply.

- San Francisco—Effective April 17, 2020, the San Francisco Public Health Emergency Leave Ordinance requires employers with 500 or more employees worldwide to provide their San Francisco employees with up to 80 hours of emergency paid sick leave for certain coronavirus-related purposes. Click here for FAQs from the city on the law. The ordinance has been extended through Feb. 12, 2021.

  The city of San Francisco has also passed the Workers and Families First Program, providing $10 million to businesses with employees in San Francisco to provide five days of sick leave beyond employers' existing policies. The additional sick leave is available only to employees who have exhausted their currently available sick leave, have exhausted or are not eligible for federal or state supplemental sick leave, and whose employer agrees to extend sick leave beyond current benefits. The city has released an employer guide on the program.

  The city has also published guidance on San Francisco Paid Sick Leave and the coronavirus.

- San Jose—On Jan. 5, 2021, following the Dec. 31, 2020, expiration of its original supplemental paid sick leave ordinance, San Jose passed a new ordinance that continues, from January 1, 2021 through June 30, 2021, the paid sick leave benefits that had been provided under the city's ordinance **and** the FFCRA's Emergency Paid Sick Leave Act, and adds a private right of action to enforce the benefits.

Colorado

Effective Jan. 1, 2021, Colorado employers must provide workers with up to 80 hours of paid public health emergency leave (PHEL) under the state's Healthy Families and Workplaces Act. The requirement was clarified in guidance and temporary emergency rules issued by the state's Department of Labor and Employment (DLE) on Dec. 23, 2020.

The PHEL requirement mandates that, on the date a public health emergency is declared, employers provide full-time employees with enough supplemental paid leave to ensure they have a total of 80 hours of paid leave to use for specified purposes related to the emergency. Part-time employees are entitled to a lesser amount of the supplemental paid leave, and all employees may use the leave for four weeks following the end of the public health emergency. According to the DLE guidance, the PHEL requirement was triggered by Colorado executive orders declaring and extending a COVID-19 public health emergency through at least Dec. 27, 2020. (Since the guidance was issued, Governor Jared Polis further extended the COVID-19 public health emergency through Jan. 27, 2021.)

Employees' unused general paid sick leave accrued under a different portion of the Healthy Families and Workplaces Act may be counted toward the PHEL requirement. Employers with fewer than 16 employees must provide 80 hours of PHEL, despite not having to provide general paid sick leave under the Healthy Families and Workplaces Act until 2022.From July 14, 2020, through Dec. 31, 2020, the Healthy Families and Workplaces Act expanded paid sick leave under the federal Families First Coronavirus Response Act (FFCRA) to cover Colorado employers and employees exempt from the federal law. This law replaced the Colorado Health Emergency Leave with Pay ("HELP") rules that had mandated paid sick leave for certain workers affected by COVID-19.

Connecticut

The state has issued FAQs on the application of various employment laws and programs—including the state's paid sick leave and family leave requirements—to workers and businesses affected by COVID-19.

District of Columbia

The District's Accrued Sick and Safe Act was amended to include the requirement that employers with between 50 and 499 employees must provide employees with up to 80 hours of **paid public health emergency leave**. The requirement is effective beginning April 10, 2020, and for the duration of the COVID-19 emergency declared by the mayor. The leave is available for the same reasons emergency paid sick leave is permitted under the FFCRA; employees must have worked for their employer for at least 15 days to be eligible.

Employees may only use the leave concurrently with or after exhausting any other paid leave for which they are eligible for covered reasons under federal law, District law or an employer's policies. In addition, employers may reduce an employee's public health emergency leave by the amount of such other paid leave the employee has taken. If leaves are taken concurrently, the employer may reduce the employee's emergency health leave pay by the amount of compensation the employee receives under the other concurrent leave.

Employers that are health care providers are exempt from the requirement. Employers may require employees to provide reasonable notice of the need for leave in the event of an emergency, and 48 hours' notice for other reasons. Employers who contribute to an employee's health insurance may require certification of the employee's need for three or more consecutive days of leave, but the employee has one week after returning to work to provide the certification.

The District also expanded its **Family and Medical Leave Act** (DCFMLA) to allow workers who have been employed by their employer for at least 30 days to use up to 16 weeks of unpaid COVID-19 leave due to:

- A health care provider's recommendation that the employee isolate or quarantine, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19;
- A need to care for a family member or an individual with whom the employee shares a household who is under a government or health care provider's order to quarantine or isolate; or
- A need to care for a child whose school or place of care is closed or whose childcare provider is unavailable.

The right to COVID-19 leave ends when the public health emergency has ended, even if an employee has not exhausted the 16-week entitlement. The requirement applies to all employers, regardless of the number of employees they employ in the District. Employers may require certain certifications, and any paid leave used by an employee for COVID-19 family and medical leave purposes counts against the 16 workweeks of allowable leave. Employees may, but are not required to, use DCFMLA leave before other leave. Violations are subject to penalties of $1,000 each.

Illinois

- Chicago—the city passed an ordinance banning retaliation against employees for staying home from work for certain COVID-19-related reasons, including caring for others with COVID-19. The law provides employees with a private right of action for violations, allowing damages of three times the wages the employee would have earned and attorneys' fees, in addition to other enforcement actions. The ordinance took effect on May 20, 2020. The city has issued FAQs on the ordinance.

Massachusetts

The Massachusetts attorney general has issued guidance indicating that state earned sick time may be used if public health officials or health care providers **require** an employee or a family member to quarantine.

Michigan

On Oct. 22, 2020, Michigan passed a law (amended effective Dec. 29, 2020) prohibiting employers from discharging, disciplining, or otherwise retaliating against employees who follow a mandate in the law that they not report to work if they test positive for COVID-19 or display the principal symptoms of COVID-19. The law is retroactive to March 1, 2020, and took effect on passage.

Under the law, workers who have **tested positive for COVID-19** are barred from returning to work until they are advised by a health care provider or public health professional that they have completed their isolation period, or the following conditions are met:

- If the employee has a fever, 24 hours have passed since the fever has stopped without the use of fever-reducing medications;
- The isolation period recommended in CDC guidelines has passed;
- The employee's principal symptoms of COVID-19 have improved; **and**
- If the employee has been advised by a health care provider or public health professional to remain isolated, the employee is no longer subject to such advisement.

An employee who **displays the principal symptoms of COVID-19** but has **not yet tested positive** is prohibited from reporting to work until:

- A negative diagnostic test result has been received; **or**
- **All** of the following apply:
    - The isolation period has passed since the principal symptoms of COVID-19 started;
    - The employee's principal symptoms of COVID-19 have improved; **and**
    - If the employee had a fever, 24 hours have passed since the fever subsided without the use of fever-reducing medication.

The law's prohibition on reporting to work and protection from retaliation extend to employees who have had close contact with an individual who tests positive for COVID-19. These workers may not report to work until either:

- The quarantine period has passed since the employee last had close contact with the individual; or
- The employee is advised by a health care provider or public health professional that they have completed their period of quarantine.

A special exemption applies to employees in the following list who are subject to quarantine, but are not experiencing any symptoms and have not tested positive for COVID-19. These employees may be allowed to participate in on-site operations when strictly necessary to preserve the function of a facility, if cessation of operation of the facility would cause serious harm or danger to public health or safety:

- Health care professionals.
- Workers at a health care facility.
- First responders (law enforcement officers, firefighters or paramedics).
- Child protective service employees.
- Workers at a child caring institution (as defined by state law).
- Workers at an adult foster care facility (as defined by state law).
- Workers at a correctional facility.

- Workers in the energy industry who perform essential energy services as described in the United States Cybersecurity and Infrastructure Security Agency's Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response, Version 2.0, March 28, 2020.
- Workers identified by the director of the department of health and human services as necessary to ensure continuation of essential public health services and enforcement of health laws, or to avoid serious harm or danger to public health or public safety.

"Principal symptoms of COVID-19" are as defined by the Michigan Department of Health and Human Services. Until the department issues a definition, principal symptoms are:

- One or more of the following not explained by a known medical or physical condition:
  - Fever
  - Shortness of breath
  - Uncontrolled cough
- Two or more of the following not explained by a known medical or physical condition:
  - Abdominal pain
  - Diarrhea
  - Loss of taste or smell
  - Muscle aches
  - Severe headache
  - Sore throat
  - Vomiting

Nevada

The Nevada Labor Commissioner's Office has issued guidance on employees' use of leave for COVID-19 purposes under the state's new paid leave law. According to the guidance, employees may elect to use available paid leave or other applicable leave while out on a mandatory government quarantine, but employers may not require that employees use the leave for this purpose.

New Jersey

New Jersey passed legislation prohibiting employers from terminating or refusing to reinstate employees for taking time off (as instructed by a medical professional) due to COVID-19. Another new law expands the definition of "serious health condition" in the state's temporary disability insurance (TDI) and family leave insurance (FLI) programs to allow benefits when a person is diagnosed with or suspected of exposure to a communicable disease, or to take care of a family member similarly affected.

The legislation also amended New Jersey's earned sick leave law to permit the use of earned sick time for isolation or quarantine recommended or ordered by a provider or public health official as a result of suspected exposure to a communicable disease, or to care for a family member under similar isolation or quarantine.

An additional law enacted on April 14, 2020, expands the state's Family Leave Act to allow employees to take up to 12 weeks of unpaid time off to care for a family member as a result of an epidemic of a communicable disease, or efforts to prevent spread of a communicable disease. The job-protected leave also applies to employees requiring leave to provide care or treatment for their child if the child's school or place of care is closed in response to a public health emergency.

The state's Department of Labor and Workforce Development has developed printable guides outlining COVID-19–related benefits for New Jersey employees. These guides explain the applicability of benefits like earned sick leave, unemployment insurance, temporary disability and family leave insurance, and workers' compensation in various COVID-19-related situations.

New York

New York state enacted a law providing leave for employees subject to a quarantine or isolation order due to COVID-19, effective March 18, 2020. Whether and how much employee compensation is required during the leave depends on the size and net income of the employer, as follows:

- **$1 million or less, and up to 10 employees**: Unpaid leave through the end of the quarantine or isolation. (Employees are eligible for paid family leave and disability benefits.)
- **More than $1 million, and up to 10 employees**: Leave through the end of the quarantine or isolation, at least five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **Between 11 and 99 employees**: Leave through the end of the quarantine or isolation, five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **100 or more employees**: 14 days of paid sick leave during quarantine or isolation.
- **Public employers:** 14 days of paid sick leave during quarantine or isolation.

The law also allows paid family leave for employees to care for children under a quarantine or isolation order. Employees eligible for federal COVID-19-related leave may take state leave only to the extent that it exceeds the federal leave. Exceptions to the leave requirement apply for asymptomatic or undiagnosed employees who can work virtually, and for employees who traveled to affected regions (including states on New York's travel advisory) for non-work purposes. For further information, see the state's FAQs and supplemental updated guidance, or contact the New York Department of Labor.

Oregon

The Oregon Bureau of Labor and Industries issued a temporary rule, later made permanent, clarifying that Oregon family leave covers an employee's absence to care for his or her child whose school or place of care has been closed in conjunction with a statewide public health emergency. Additional temporary rules provide clarifications to the terms "child care provider" (includes unpaid and unlicensed providers such as grandparents and neighbors), "place of care" (expansive definition includes homes and other locations not solely dedicated to child care) and "closure" of schools and child care. The new temporary rules also permit intermittent leave for intermittent school and child care closures, and explain what kind of verification for leave may be required. The temporary rules expire March 12, 2021.

Oregon has also issued guidance on the use of sick time (which may be used for public health school closures) and family and medical leave in the context of COVID-19.

Pennsylvania

Local Laws

- Philadelphia— The city expanded its employee leave ordinance to require paid **public health emergency leave** for workers not covered by the FFCRA. Under the mandate, which expired Dec. 31, 2020, workers were permitted up to 112 hours of paid leave for the same reasons leave was permitted by the FFCRA.

The ordinance covered all employers the city was legally allowed to regulate. Certain collective bargaining agreements were exempt. Employees were covered if they worked in Philadelphia for one or more hiring entities for 40 hours annually, and they:

- Were not entitled to FFCRA leave from the hiring entity; or
- Were exempted from FFCRA leave at the hiring entity's option.

The ordinance included domestic workers, home care workers, food delivery drivers and transportation network drivers, among others. However, workers who were reasonably able to work remotely were not entitled to leave.

Full-time employees received 80 hours of leave, or the average hours worked over a 14-day period (whichever was greater), up to a 112-hour maximum. Part-time employees received leave equal to their average hours worked over a 14-day period, and the ordinance provided a calculation method for variable hour workers. Employers were allowed to require the new leave to run concurrently with other public health emergency leave required by law, and employers with leave policies that met or exceeded the mandate were not required to provide additional leave. The ordinance contained notice, nonretaliation, recordkeeping and enforcement provisions.

Before the public health emergency leave ordinance was enacted, emergency regulations were issued allowing employees covered by the city's sick leave law to use that leave for specified COVID-19-related reasons. Click here for more information.

- Pittsburgh—Effective Dec. 9, 2020, through a week after the end of the public health emergency, employers with **50 or more employees** are required to provide covered employees with up to **80 hours** of paid sick time for specified COVID-19 reasons (relating to their own or another's illness or exposure) that prevent them from working or teleworking. The ordinance covers employees who:

  - Have been employed by the employer for 90 days;
  - Work within Pittsburgh after Dec. 9, 2020;
  - Normally work within Pittsburgh but are currently teleworking from any other location as a result of COVID-19; or
  - Work from multiple locations or from mobile locations, if 51% or more of the employee's time is spent within Pittsburgh.

  Employees who work 40 or more hours per week are entitled to a minimum of 80 hours of leave. Part-time workers are entitled to an amount of leave equal to the amount of time the employee is otherwise scheduled to work or works on average in a 14-day period, whichever is greater, unless the employer opts to grant more leave. The ordinance contains a formula for computing leave hours for variable-hour employees.

  There is no waiting period for use of the leave. In addition, employers are temporarily prohibited from withholding sick time on an accrual basis under Pittsburgh's paid sick time law if an employee's sick time use request arises directly from COVID-19. Employers must make available the maximum amount of sick time required under the Pittsburgh paid sick time law to employees immediately upon hiring, if their requested use arises directly from

COVID-19. Employers may continue to require receipt of sick time on an accrual basis for all other requests for the leave.

The COVID-19 sick time is in addition to any paid leave or sick time provided by employers, and it may be used before any other paid sick leave. Employers may substitute leave required under federal or state law to the extent the requirements coincide and to the extent permitted by the federal or state law. Employers may substitute additional leave provided specifically for COVID-19 use after March 13, 2020, to the extent the requirements coincide.

Rhode Island

The Rhode Island Division of Labor and Training is waiving certain eligibility requirements for individuals filing COVID-19-related claims under the state's temporary disability insurance and temporary caregiver insurance programs. The Division has developed a fact sheet with further information.

Washington

Food production employers were prohibited from operating between **Aug. 18, 2020, and Nov. 13, 2020**, unless they provided employees not covered by FFCRA leave with **emergency supplemental paid sick leave**.

- Seattle—On June 1, 2020, the Seattle City Council passed an ordinance requiring food delivery network companies and transportation network companies to provide gig workers working in Seattle with paid sick and paid safe time during the COVID-19 emergency. The ordinance took effect July 12, 2020. It covers employers with at least 250 gig workers worldwide, and it mandates at least one day of earned sick and safe time for every 30 days worked in Seattle. Accrual is retroactive to Oct. 1, 2019, or the beginning of employment, whichever occurred or occurs later.

  The law will remain in effect for three years after the end of the civil emergency proclaimed by the mayor on March 3, 2020; three years after any Seattle COVID-19 civil emergency proclaimed by a public official; or on Dec. 31, 2023, whichever is latest.

  In addition, an emergency rule makes it an impermissible unreasonable burden under the city's paid sick and safe time law for employers to require verification of an employee's illness from a health care provider. Alternative means of verification are suggested in the rule. The rule was scheduled to remain in effect until June 7, 2020.