

# MSF CLIENT ALERT

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*The state of New York and the federal government have passed legislation providing various protections for employees or employees with family members who may be subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The provisions of the New York law are effective immediately (as of March 18, 2020). The federal law becomes effective in fifteen (15) days (on April 2, 2020). This Client Alert will focus on the provisions of the New York law. Another Client Alert will follow detailing the federal law requirements and interactions with New York state and city law.*

## **Eligible Employees**

Employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, the local board of health, or any governmental entity duly authorized to issue such order due to COVID-19 are eligible for sick leave under this act. The requirements of this legislation do not apply in cases where an employee is asymptomatic, or has not yet been diagnosed with any medical condition, and is able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means.

## **Ineligible Employees**

An employee who recently traveled abroad may not be eligible to receive paid benefits under the act depending on the circumstances. To be ineligible, the employee must have returned to the United States after travelling to a country which the Centers for Disease Control and Prevention has issued a level two (2) or three (3) health notice. The travel must have occurred after that employee received the travel health notice, and must have been travel that was not part of the employee's employment or at the direction of their employer. If such

an employee was subsequently placed under mandatory or precautionary order of quarantine because of that travel, the employee will not be eligible to receive paid sick leave benefits or any other paid benefits provided by this act. These employees will be eligible to use accrued leave provided by the employer. If the employee does not have accrued leave or sufficient accrued leave, the employer must provide unpaid sick leave for the duration of the order.

## **Employer Obligations**

### **Private Employers**

Requirements for private employers vary depending on the number of employees employed as of January 1, 2020, and, in certain circumstances, the net income of the employer in the previous tax year.

### **Employers with ten (10) or fewer employees and net income of less than \$1,000,000**

Employers must provide unpaid sick leave to each employee subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19 for the duration of the order. Employees subject to such order

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may also be eligible for paid family leave benefits, and disability benefits.

## ***Employers with ten (10) or fewer employees and net income of greater than \$1 million, and Employers with between eleven (11) and ninety-nine (99) employees***

Employers must provide at least five (5) days of paid sick leave to each employee subject to a mandatory or precautionary order of quarantine or isolation. After five (5) days of paid sick leave employers subject to this requirement must also provide employees subject to such order with unpaid leave until the termination of the order, at which point such employees may also be eligible for paid family leave benefits, and disability benefits.

## ***Employers with one hundred (100) or more employees***

Employers must provide at least fourteen (14) days of paid sick leave to each employee subject to a mandatory or precautionary order of quarantine or isolation.

## **Public Employers**

Public employers must provide at least fourteen (14) days of paid sick leave to each officer or employee who is subject to a mandatory or precautionary order of quarantine or isolation. Each officer or employee must be compensated at his or her regular rate of pay for those regular work hours during which the officer or employee is absent from work due to the order.

## ***Employee Protections***

Employees who take leave pursuant to this act shall be protected from discharge, threats, penalties, or any other

manner of discrimination or retaliation because they have taken such leave. Upon return from leave under this act, employees shall be restored to the position of employment held prior to leave, with the same pay and other terms and conditions of employment.

## ***Additional Information***

### ***Federal Law Pre-Emption***

New York was watching as the Senate considered a house bill addressing many of the same issues highlighted here. That law has now passed the Senate and been signed by President Trump and becomes effective on April 2, 2020. We are reviewing the requirements of the federal law and the interactions with New York State law and plan to provide employers with another Client Alert prior to the effective date.

Anticipating that this federal law may be passed, the New York law included a provision stating that should a federal law or regulation be enacted that provides sick leave and/or employee benefits at the same level or in excess to those provided by this act, the benefits provided by New York's act will no longer be available to employees. New York's law also states that should a federal law or regulation be enacted that provides sick leave and/or employee benefits that are lower than those provided by this act, eligible employees may claim the difference between the federal law or regulation and the benefits provided by New York's act. We are evaluating areas where the federal law may provide benefits that are less favorable than the New York State law and will highlight those areas in our next Client Alert. Until the April 2, 2020

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effective date of the federal legislation, employers must comply with the provisions of the New York law.

## **Miscellaneous Provisions**

The state law further provides that no benefit or requirement in this act shall in anyway interfere with the rights of public employees' or employers' rights and benefits under law, rule, regulation, or collectively negotiated agreement, or to prevent any personnel action which otherwise would have been taken regardless of any request to use any leave provided by this act. Employers should therefore review any collectively

negotiated agreements and continue to comply with those terms. This law also does not prevent employers from furloughing or laying off employees.

There are other provisions included in the state law relating to sick leave that may be used for purposes outside the COVID-19 pandemic that will become effective in 180 days. We will highlight these provisions in a later communication.

Please contact an attorney in MSF's Employment Group if you need assistance with respect to these new obligations.



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Additional COVID-19 Resources That Might Interest You.	
<a href="#">MSF COVID-19 HUB</a>	<a href="#">Coronavirus Guidance - Real Estate</a>
<a href="#">New COVID-19 Protections for Employees signed on March 18, 2020</a>	<a href="#">Coronavirus Guidance -Taxation &amp; Estates</a>
<a href="#">Coronavirus Guidance – Paid Sick Leave</a>	
<a href="#">What Every Employer Needs To Know</a>	

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