

Updated Guidance from New York Department of Labor on Benefits for Multiple Quarantines under the NY COVID-19 Leave Law

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The New York Department of Labor (“NY DOL”) released guidance stating that under the New York COVID-19 Paid Sick Leave law, an employee who is under a mandatory [order of quarantine or isolation by a health department](#) (or similar), or who receives a positive COVID-19 test and cannot work or telework, may be eligible for COVID-19 paid leave **up to 3 times**.

New York COVID-19 paid leave is a benefit in addition to and separate from New York’s Paid Sick Leave law. It requires employers to give employees job protection and compensation for a certain time period (up to 5 days of paid leave for employers with less than 100 employees and up to 14 days of paid leave for employers with more than 100 employees -- [depending on the size and/or income of the employer](#)) when they cannot work and cannot telework because they are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. Both the statute and initial guidance issued by the NY DOL were silent as to whether eligible employees could receive this benefit more than once.

When do employers have to provide additional COVID-19 paid leave to an employee who has previously received it?

In short, if the employee subsequently tests positive for COVID-19, the employee will receive a new, mandatory period of quarantine and may be eligible to receive additional leave benefits. While most employees are not required to get tested at the end of a period of quarantine or isolation, those that do and receive a positive test result may be eligible for additional leave benefits under the NY COVID-19 Paid Sick Leave law.

To receive the paid leave, employees must “submit documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19.” [See](#) Guidance on use of COVID-19 Sick Leave, [available here](#). However, if the employer itself administered the test, no further documentation is required.

What if an employee is not otherwise subject to a mandatory order of quarantine or isolation, but the employer nonetheless requires the employee to remain out of work due to exposure or potential exposure to COVID-19 (whether or not exposure was in the workplace)?

The NY DOL guidance states that if an employer does not permit an employee to return to work due to an actual or potential exposure to COVID-19, and there is no ability to telework, then the employer “shall continue to pay the employee at the employee’s regular rate of pay until such

time as the employer permits the employee to return to work,” even though the employee is not COVID-19 positive, or otherwise subject to an order of isolation or period of mandatory quarantine. This guidance appears to go beyond what is required by the COVID-19 leave statute, and it is unclear at this time the circumstances under which a court may enforce such a paid time off requirement. If the employee tests positive for COVID-19 or otherwise becomes subject to an order of quarantine or isolation, then the protections and benefits of the COVID-19 leave law go into effect for the period of quarantine or isolation.

What the NY DOL Guidance Means for Employers

If employers have a net income greater than \$1 million and have at least 10 employees or if they have up to 99 employees, they may have to provide up to 15 days of paid COVID-19 leave (5 paid days up to 3 times). Employers with 100 or more employees, may have to provide up to 42 days of paid COVID-19 leave (14 paid days up to 3 times). Critically, this COVID-19 paid leave for a mandatory period of quarantine or isolation is separate from, and in addition to, other employer-provided paid time off and sick leave benefits to which employees may be entitled. It is also in addition to any NY State Paid Disability and/or Paid Family Leave benefits for which employees may be eligible. That means employers must provide additional paid time off to meet this obligation.

Further, employers who require an employee to remain out of work due to an actual or perceived exposure, may be obligated to continue to pay that employee, even if the employee is not otherwise subject to an order of quarantine or isolation mandated by a public health authority.

As with just about everything else related to COVID-19, the legal landscape is changing rapidly. Employers who fail to provide leave, or the proper type of leave, may face penalties and fines.

Employers should consult with legal counsel for guidance with providing leave benefits to employees impacted by COVID-19.