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New Guidance Indicates Employees Entitled to Multiple Leaves Under the New York COVID-19 Sick Leave Law

Employers have grappled with determining what leave obligations the New York COVID-19 Sick Leave Law has imposed on them since its enactment on March 18, 2020. On January 20, the New York State Department of Labor issued new guidance addressing previously unanswered questions about whether employees are eligible for multiple leaves under the NY COVID-19 Sick Leave Law. While the new guidance answers some lingering questions, it makes clear that it does not replace but rather supplements New York State's previously published guidance and Frequently Asked Questions, which remain in effect.

Recap of the NY COVID-19 Sick Leave Law

The NY COVID-19 Sick Leave Law requires employers to provide certain paid and unpaid leave to employees who are subject to qualifying mandatory or precautionary orders of quarantine or isolation issued by an authorized governmental entity. Employers' obligations under the NY COVID-19 Sick Leave Law vary based on their size and net income and whether they are a private or public entity.

- **Employers with 10 or fewer employees as of January 1, 2020,** must provide ***unpaid*** job-protected leave until the termination of the order of quarantine or isolation.
- **Employers with 10 or fewer employees as of January 1, 2020, with a net income of greater than $1 million in the previous tax year, or between 11 and 99 employees as of January 1, 2020,** must provide at least ***five*** days of job-protected paid leave, and additional job-protected unpaid leave until the termination of the order of quarantine or isolation.
- **Employers with 100 or more employees as of January 1, 2020,** must provide ***fourteen*** days of job-protected leave during the order of quarantine or isolation.

New York Department of Labor's Guidance

New guidance makes clear that employers must provide eligible employees with up to ***three*** leaves under the NY COVID-19 Sick Leave Law. Employees seeking to take leave for the second or third time must meet specific eligibility criteria. To be eligible for a second or third leave, the employee's need to quarantine must be based on a positive COVID-19 diagnostic test, rather than merely having close contact with someone diagnosed with COVID-19. The guidance states that employees who, following the conclusion of an initial period of quarantine or isolation, either continue to test positive or subsequently test positive for COVID-19, shall be automatically deemed to be subject to a qualifying mandatory or precautionary order of quarantine or isolation. Employees must submit documentation from a licensed medical provider or testing facility attesting to the positive COVID-19 test, unless the test is conducted by their employer. The guidance also clarifies that although employees who continue to test positive for COVID-19 after a period of isolation or quarantine are entitled to additional leave, there is no requirement that the employee obtain a negative test result to discontinue the isolation/quarantine period.

In addition to clarifying that employees are eligible for multiple leaves in certain circumstances, the guidance appears to create a new leave entitlement for employees whose employers do not permit them to report to work because they have been exposed or potentially exposed to COVID-19. Employees appear to be eligible for this entitlement regardless of whether such exposure was work-related. The guidance states that in these circumstances, employers "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 or the

employee becomes subject to a mandatory or precautionary order of quarantine or isolation," at which point the employee may be eligible for leave under the NY COVID-19 Sick Leave Law. This benefit appears to exceed the statutory requirements of the NY COVID-19 Sick Leave Law. Given the complexities surrounding when employees should be excluded from the workplace, we recommend employers speak with counsel regarding this issue.

Takeaways

Laws impacting the workplace are rapidly evolving on both the state and federal levels in response to the COVID-19 pandemic. The recent guidance from the New York State Department of Labor imposes significant obligations on employers. The obligations imposed on employers under the new guidance were not clear when New York COVID-19 Sick Leave Law was enacted over than ten months ago. While the guidance may be subject to challenges–because in general, state agencies cannot create obligations that exceed those provided by statute–it reflects the Department of Labor's current enforcement position. Therefore, employers should recognize that failure to provide leave pursuant to this enforcement guidance may result in legal claims. The guidance also serves as an important reminder to all employers that they must continue to diligently monitor, assess and reassess laws enacted in response to the COVID-19 pandemic.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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