

STATE OF NEW YORK

10153

IN ASSEMBLY

March 18, 2020

Introduced by M. of A. NOLAN, CRESPO, HEASTIE, PEOPLES-STOKES, WEINSTEIN, ABBATE, AUBRY, BARRETT, BLAKE, BUCHWALD, BURKE, BUTTENSCHON, CAHILL, CARROLL, COLTON, COOK, CRUZ, DARLING, DAVILA, DE LA ROSA, DenDEKKER, DINOWITZ, ENGLEBRIGHT, EPSTEIN, FAHY, FERNANDEZ, GANTT, GLICK, GOTTFRIED, GRIFFIN, GUNTHER, HEVESI, JACOBSON, JAFFEE, JEAN-PIERRE, JOYNER, KIM, LAVINE, LENTOL, LIFTON, MAGNARELLI, McMAHON, M. G. MILLER, MOSLEY, NIOU, O'DONNELL, ORTIZ, OTIS, PAULIN, PICHARDO, PRETLOW, QUART, RAMOS, RICHARDSON, RIVERA, RODRIGUEZ, D. ROSENTHAL, L. ROSENTHAL, ROZIC, RYAN, SAYEGH, SEAWRIGHT, SIMON, SIMOTAS, SOLAGES, STECK, STERN, STIRPE, TAYLOR, THIELE, VANEL, WALLACE, WEPRIN, WILLIAMS, ZEBROWSKI, D'URSO, FALL, BRONSON -- (at request of the Governor) -- read once and referred to the Committee on Labor

AN ACT providing requirements for sick leave and the provision of certain employee benefits when such employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. 1.(a) For employers with ten or fewer employees as of Janu-
2 ary 1, 2020, each employee who is subject to a mandatory or precaution-
3 ary order of quarantine or isolation issued by the state of New York,
4 the department of health, local board of health, or any governmental
5 entity duly authorized to issue such order due to COVID-19, shall be
6 provided with unpaid sick leave until the termination of any mandatory
7 or precautionary order of quarantine or isolation due to COVID-19 and
8 any other benefit as provided by any other provision of law. During the
9 period of mandatory or precautionary quarantine or isolation, an employ-
10 ee shall be eligible for paid family leave benefits and benefits due
11 pursuant to disability pursuant to this act. An employer with ten or
12 fewer employees as of January 1, 2020, and that has a net income of
13 greater than one million dollars in the previous tax year, shall provide
14 each employee who is subject to a precautionary or mandatory order of
15 quarantine or isolation issued by the state of New York, the department
16 of health, local board of health, or any governmental entity duly
17 authorized to issue such order due to COVID-19, at least five days of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 paid sick leave and unpaid leave until the termination of any mandatory
2 or precautionary order of quarantine or isolation. After such five days
3 of paid sick leave, an employee shall be eligible for paid family leave
4 benefits and benefits due pursuant to disability pursuant to this act.

5 (b) For employers with between eleven and ninety-nine employees as of
6 January 1, 2020, each employee who is subject to a mandatory or precau-
7 tionary order of quarantine or isolation issued by the state of New
8 York, the department of health, local board of health, or any govern-
9 mental entity duly authorized to issue such order due to COVID-19, shall
10 be provided with at least five days of paid sick leave and unpaid leave
11 until the termination of any mandatory or precautionary order of quaran-
12 tine or isolation. After such five days of paid sick leave, an employee
13 shall be eligible for paid family leave benefits and benefits due pursu-
14 ant to disability pursuant to this act.

15 (c) For employers with one hundred or more employees as of January 1,
16 2020, each employee who is subject to a mandatory or precautionary order
17 of quarantine or isolation issued by the state of New York, the depart-
18 ment of health, local board of health, or any governmental entity duly
19 authorized to issue such order due to COVID-19, shall be provided with
20 at least fourteen days of paid sick leave during any mandatory or
21 precautionary order of quarantine or isolation.

22 (d) For public employers, each officer or employee who is subject to a
23 mandatory or precautionary order of quarantine or isolation issued by
24 the state of New York, the department of health, local board of health,
25 or any governmental entity duly authorized to issue such order due to
26 COVID-19 shall be provided with at least fourteen days of paid sick
27 leave during any mandatory or precautionary order of quarantine or
28 isolation. Each officer or employee shall be compensated at his or her
29 regular rate of pay for those regular work hours during which the offi-
30 cer or employee is absent from work due to a mandatory or precautionary
31 order of quarantine or isolation due to COVID-19. For purposes of this
32 act, "public employer" shall mean the following: (i) the state; (ii)
33 a county, city, town or village; (iii) a school district, board of
34 cooperative educational services, vocational education and extension
35 board or a school district as enumerated in section 1 of chapter 566
36 of the laws of 1967, as amended; (iv) any governmental entity operating
37 a college or university; (v) a public improvement or special district
38 including police or fire districts; (vi) a public authority, commis-
39 sion or public benefit corporation; or (vii) any other public corpo-
40 ration, agency, instrumentality or unit of government which exercises
41 governmental power under the laws of this state.

42 (e) Such leave shall be provided without loss of an officer or employ-
43 ee's accrued sick leave.

44 2. For purposes of this act, "mandatory or precautionary order of
45 quarantine or isolation" shall mean a mandatory or precautionary order
46 of quarantine or isolation issued by the state of New York, the depart-
47 ment of health, local board of health, or any government entity duly
48 authorized to issue such order due to COVID-19.

49 3. Upon return to work following leave taken pursuant to this act, an
50 employee shall be restored by his or her employer to the position of
51 employment held by the employee prior to any leave taken pursuant to
52 this act with the same pay and other terms and conditions of employment.
53 No employer or his or her agent, or the officer or agent of any corpo-
54 ration, partnership, or limited liability company, or any other person,
55 shall discharge, threaten, penalize, or in any other manner discriminate

1 or retaliate against any employee because such employee has taken leave
2 pursuant to this act.

3 4. An employee shall not receive paid sick leave benefits or any other
4 paid benefits provided by any provisions of this section if the employee
5 is subject to a mandatory or precautionary order of quarantine because
6 the employee has returned to the United States after traveling to a
7 country for which the Centers for Disease Control and Prevention has a
8 level two or three travel health notice and the travel to that country
9 was not taken as part of the employee's employment or at the direction
10 of the employee's employer, and if the employee was provided notice of
11 the travel health notice and the limitations of this subdivision prior
12 to such travel. Such employee shall be eligible to use accrued leave
13 provided by the employer, or to the extent that such employee does not
14 have accrued leave or sufficient accrued leave, unpaid sick leave shall
15 be provided for the duration of the mandatory or precautionary quaran-
16 tine or isolation.

17 5. The commissioner of labor shall have authority to adopt regu-
18 lations, including emergency regulations, and issue guidance to effectuate
19 any of the provisions of this act. Employers shall comply with regu-
20 lations promulgated by the commissioner of labor for this purpose which
21 may include, but is not limited to, standards for the use, payment, and
22 employee eligibility of sick leave pursuant to this act.

23 6. Notwithstanding any other provision of law, and for purposes of
24 this act only, for purposes of article 9 of the workers' compensation
25 law, "disability" shall mean: any inability of an employee to perform
26 the regular duties of his or her employment or the duties of any other
27 employment which his or her employer may offer him or her as a result of
28 a mandatory or precautionary order of quarantine or isolation issued by
29 the state, the department of health, a local board of health, or any
30 government entity duly authorized to issue such order due to COVID-19
31 and when the employee has exhausted all paid sick leave provided by the
32 employee's employer under this act.

33 7. Notwithstanding subdivision 1 of section 204 of the workers'
34 compensation law, disability benefits payable pursuant to this act shall
35 be payable on the first day of disability.

36 8. Notwithstanding any other provision of law, and for purposes of
37 this act only, for purposes of article 9 of the workers' compensation
38 law, "family leave" shall mean: (a) any leave taken by an employee from
39 work when an employee is subject to a mandatory or precautionary order
40 of quarantine or isolation issued by the state, the department of
41 health, a local board of health, or any government entity duly author-
42 ized to issue such order due to COVID-19; or (b) to provide care for a
43 minor dependent child of the employee who is subject to a mandatory or
44 precautionary order of quarantine or isolation issued by the state, the
45 department of health, a local board of health, or any government entity
46 duly authorized to issue such order due to COVID-19.

47 9. Notwithstanding any other provision of law, and for purposes of
48 this act only, for purposes of article 9 of the workers' compensation
49 law, disability and family leave benefits pursuant to this act may be
50 payable concurrently to an eligible employee upon the first full day of
51 an unpaid period of mandatory or precautionary order of quarantine or
52 isolation issued by the state of New York, the department of health, a
53 local board of health, or any government entity duly authorized to issue
54 such order due to COVID-19, provided however, an employee may not
55 collect any benefits that would exceed \$840.70 in paid family leave and
56 \$2,043.92 in benefits due pursuant to disability per week.

1 10. Notwithstanding any other provision of law, and for purposes of
2 this act only, for purposes of article 9 of the workers' compensation
3 law, the maximum weekly benefit which the employee is entitled to
4 receive for benefits due pursuant to disability pursuant to subdivision
5 six of this section only shall be the difference between the maximum
6 weekly family leave benefit and such employee's total average weekly
7 wage from each covered employer up to a maximum benefit due pursuant to
8 disability of \$2,043.92 per week.

9 11. Notwithstanding subdivision 7 of section 590, and subdivision 2 of
10 section 607, of the labor law, a claim for benefits under article 18 of
11 the labor law due to closure of an employer otherwise subject to this
12 section for a reason related to COVID-19 or due to a mandatory order of
13 a government entity duly authorized to issue such order to close such
14 employer otherwise subject to this section, shall not be subject to a
15 waiting period for a claim for benefits pursuant to such title.

16 12. A mandatory or precautionary order of quarantine or isolation
17 issued by the state, the department of health, a local board of health,
18 or any government entity duly authorized to issue such order due to
19 COVID-19 shall be sufficient proof of disability or proof of need for
20 family leave taken pursuant to this act.

21 13. The provisions of this act shall not apply in cases where an
22 employee is deemed asymptomatic or has not yet been diagnosed with any
23 medical condition and is physically able to work while under a mandatory
24 or precautionary order of quarantine or isolation, whether through
25 remote access or other similar means.

26 14. Nothing in this section shall be deemed to impede, infringe,
27 diminish or impair the rights of a public employee or employer under any
28 law, rule, regulation or collectively negotiated agreement, or the
29 rights and benefits which accrue to employees through collective
30 bargaining agreements, or otherwise diminish the integrity of the exist-
31 ing collective bargaining relationship, or to prohibit any personnel
32 action which otherwise would have been taken regardless of any request
33 to use, or utilization of, any leave provided by this act.

34 15. Notwithstanding any inconsistent provision of law, on or before
35 June 1, 2020, the superintendent of financial services by regulation, in
36 consultation with the director of the state insurance fund and the chair
37 of the workers' compensation board of the state, shall promulgate regu-
38 lations necessary for the implementation of a risk adjustment pool to be
39 administered directly by the superintendent of financial services, in
40 consultation with the director of the state insurance fund and the chair
41 of the workers' compensation board of the state. "Risk adjustment pool"
42 as used in this subdivision shall mean the process used to stabilize
43 member claims pursuant to this act in order to protect insurers from
44 disproportionate adverse risks. Disproportionate losses of any members
45 of the risk adjustment pool in excess of threshold limits established by
46 the superintendent of financial services of the state may be supported,
47 if required by the superintendent, by other members of such pool includ-
48 ing the state insurance fund in a proportion to be determined by the
49 superintendent. Any such support provided by members of the pool shall
50 be fully repaid, including reasonable interest, through a mechanism and
51 period of time to be determined by the superintendent of financial
52 services.

53 16. (a) The superintendent of financial services, in consultation
54 with the director of the state insurance fund and the chair of the work-
55 ers' compensation board shall issue two reports assessing the risk
56 adjustment pool required by this act.

1 (b) On or before January 1, 2022, an initial report shall be provided
2 to the speaker of the assembly, the chair of the assembly ways and means
3 committee and the chair of the assembly labor committee, the temporary
4 president of the senate, the chair of the senate finance committee and
5 the chair of the senate labor committee. Such report shall include:
6 the total number of claims filed pursuant to this section for (i) family
7 leave benefits, and (ii) benefits due to disability, as a result of a
8 mandatory or precautionary order of quarantine or isolation due to
9 COVID-19; the aggregate amount of paid family leave claims and disabili-
10 ty claims; the total amount of the claims paid for out of the risk
11 adjustment pool; the threshold limits established by the department of
12 financial services; and any other information the superintendent of
13 financial services deems necessary to provide to the legislature.

14 (c) On or before January 1, 2025, a final report shall be provided to
15 the speaker of the assembly, the chair of the assembly ways and means
16 committee and the chair of the assembly labor committee, the temporary
17 president of the senate, the chair of the senate finance committee and
18 the chair of the senate labor committee. Such report shall include the
19 balance of the risk adjustment pool, if any, the total amount collected
20 through the repayment mechanism established by the department of finan-
21 cial services including interest; and any other information the super-
22 intendent of financial services deems necessary to provide to the legis-
23 lature. If there exists a balance in the risk adjustment pool, the
24 final report shall provide a timeline by which repayment will be
25 completed.

26 17. If at any point while this section shall be in effect the federal
27 government by law or regulation provides sick leave and/or employee
28 benefits for employees related to COVID-19, then the provisions of this
29 section, including, but not limited to, paid sick leave, paid family
30 leave, and benefits due to disability, shall not be available to any
31 employee otherwise subject to the provisions of this section; provided,
32 however, that if the provisions of this section would have provided sick
33 leave and/or employee benefits in excess of the benefits provided by the
34 federal government by law or regulation, then such employee shall be
35 able to claim such additional sick leave and/or employee benefits pursu-
36 ant to the provisions of this section in an amount that shall be the
37 difference between the benefits available under this section and the
38 benefits available to such employee, if any, as provided by such federal
39 law or regulation.

40 § 2. This act shall take effect immediately.