

*On March 18, the state of New York enacted legislation implementing a paid sick leave program, as well as other changes, to the New York State Disability Law (DBL) and New York State Paid Family Leave (PFL) provisions in response to COVID-19. This is a summary of the enacted legislation implementing a paid sick leave program, as well as other changes, to the current New York State DBL and PFL provisions.*

## **Overview of COVID-19-related sick leave and additional changes to DBL and PFL programs**

**Leave requirements, for an employee's own quarantine, vary by employer size:** COVID-19-related paid and unpaid sick leave entitlements vary by employer size. The employer size determination is based on the total number of employees in the United States on January 1, 2020.

**Businesses with 1-10 employees and net income of less than \$1 million:**

Employees must be provided unpaid sick leave until the termination of the quarantine order. In order to receive pay, these employees are eligible for DBL and PFL benefits.

**Businesses with 1-10 employees and net income of \$1 million or more:**

Employees must be provided five days of paid sick leave if they are under a mandatory or precautionary quarantine. Unpaid sick leave must also be provided for the duration of the quarantine order.

After the five days of paid sick leave are exhausted, employees may be eligible for DBL and PFL benefits.

**Businesses with 11-99 employees:**

Employees must be provided five days of paid sick leave if they are under a mandatory or precautionary quarantine. Unpaid sick leave must also be provided for the duration of the quarantine order.

After the five days of paid sick leave are exhausted, employees may be eligible for DBL and PFL benefits.

**Businesses with more than 100 employees:**

Employees must be provided with at least 14 days of paid sick leave if they are under a mandatory or precautionary quarantine.

**Public employers:**

Employees must be provided with at least 14 days of paid sick leave if they are under a mandatory or precautionary quarantine. Public employers include state/local/county and municipal governments, school boards and districts, state-run college and universities, and police and fire districts.

**Leave requirements to care for a minor child under quarantine (new clarification):**

On April 29, 2020, the state of New York issued clarification to insurance carriers that care for a minor child under quarantine does not qualify an employee for paid sick leave under New York's COVID-19 legislation. Rather, these employees may qualify for Paid Family Leave benefits regardless of the size of their employer.

**Job Protections:** The bill contains job restoration and non-retaliation provisions.

**Adds a new leave reason for quarantine:** Quarantine is defined as a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the Department of Health, local board of health, or any governmental entity duly authorized to issue such an order due to COVID-19.

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**Modification to the definition of Disability:** The bill changes the definition of Disability.

- Disability is any inability of an employee to perform the regular duties of his or her employment or the duties of any other employment which his or her employer may offer him or her as a result of a mandatory or precautionary order of quarantine or isolation issued by the state, the Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 when the employee has exhausted all paid sick leave provided by the employee's employer under this act.

**Waives the Elimination Period for COVID-19-related quarantine DBL claims:** DBL benefits may be payable on the first day of disability for eligible quarantine claims when an employee works for an employer with fewer than 100 total lives and the employee has met existing eligibility requirements. Actual start date will depend on whether an employee is receiving NY paid sick leave benefits from their employer.

**Modification to the definition of Family Leave:** The bill changes the definition of Family Leave.

- Family Leave is any leave taken by an employee from work when an employee is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19; or
- To provide care for a minor dependent child of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

**Changes how DBL and PFL benefits are run and how they are paid:**

- DBL and PFL benefits may run concurrently when an employee is on claim due to their own quarantine order.
- Depending on the employer size, benefits may be payable on the first day of quarantine.
- An employee may not collect any benefits that would exceed \$840.70 in paid family leave and \$2,043.92 in DBL benefits per week.
- The maximum weekly benefit for DBL is the difference between the maximum weekly family leave benefit and the employee's total average weekly wage from each covered employer up to a maximum benefit due pursuant to disability of \$2,043.92 per week.
- Note: employees on leave to care for a minor child subject to an order of quarantine or isolation may only qualify for PFL benefits, as outlined above.

**Documentation is required:** A mandatory or precautionary order of quarantine or isolation issued by the state, the Department of Health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 is sufficient proof of Disability or proof of need for Family Leave. An attestation may also be provided by a medical provider advising that an employee or their minor dependent child is subject to an order. See additional information [here](#).

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**Employees excluded from expanded coverage:**

- Employees who are deemed asymptomatic or have not yet been diagnosed with any medical condition and who are physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means, are not eligible for benefits.
- Employees are not eligible to receive paid sick or other benefits in this bill if they are self-quarantining after returning to the United States after non-work-related travel abroad to a Level 2 or 3 country and had notice of travel restrictions prior to the trip. These employees may use other accrued leave. They must be provided unpaid sick time through the duration of precautionary quarantine.
- Employees who work for an employer with 100 or more lives nationwide or who work for a public employer are not eligible for the expanded quarantine benefits. However, these employees may qualify for at least 14 days of employer-provided paid sick leave benefits, as outlined in this summary.

**Federal preemption of NY benefits:**

- To the extent that any federal benefits that may be enacted are more generous than contained in this bill, the federal law will preempt this bill.
- However, if the federal benefits are less generous, employees can claim benefits in the amount of the difference between the two programs.

**Effective Date:** Immediate

**Expiration of expanded provisions:** None provided in bill.

Summary current as of April 30, 2020.