



COVID-19: DOH and DOL Issue New York COVID-19 Leave Guidance

On June 25, 2020, the New York State Department of Health ([DOH](#)) and the New York State Department of Labor ([DOL](#)) published additional [guidance](#) on paid sick leave for health care employees due to COVID-19 under New York's COVID-19 sick leave law ("NY COVID-19 Leave Law"). The guidance states that employees are entitled to multiple renewing tranches of paid or unpaid leave (depending on the characteristics of the employer) under the NY COVID-19 Leave Law, if and when such employee tests positive for COVID-19.

The latest guidance states that a health care employee who returns to work following a period of mandatory quarantine or isolation and subsequently tests positive for COVID-19 must not report to work. Such an employee will be subject to mandatory isolation and be eligible for paid sick leave under the NY COVID-19 Leave Law. Such an employee must submit documentation of the positive test unless it was administered by the employer. If a health care employee continues to test positive for COVID-19 after the end of a period of quarantine or isolation, that employee should continue isolation, and again be eligible for sick leave under the NY COVID-19 Leave Law.

Note that the DOH guidance applies where the health care employee has tested positive for COVID-19, or continues to test positive for COVID-19 by a diagnostic test. The employer may require documentation to that effect, provided the positive test result did not come from a test administered by the employer. The NY COVID-19 Leave Law itself states that "the provisions of this act shall not apply in cases where an employee is deemed asymptomatic or has not yet been diagnosed with any medical condition and is physically able to work while under a mandatory or precautionary order of quarantine or isolation, whether through remote access or other similar means."

The guidance states that in no event will a health care employee be eligible for sick leave under the NY COVID-19 Leave Law for more than three (3) orders of quarantine or isolation. By contrast, an employee is not entitled to recurring periods of emergency paid sick leave, after usage of the prescribed hours by an employee, under the Families First Coronavirus Response Act.

The new DOH guidance should be applied by providers in concert with the most recent return-to-work protocols issued by DOH for health care providers, discussed above, and the most recent protocols issued for other essential workers.

Please [contact](#) our office with any questions concerning the latest guidance by DOH, or the application to your agency of the NY COVID-19 Leave Law and the Families First Coronavirus Response Act.

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