

HR COMPLIANCE BULLETIN

Highlights

States are increasingly enacting laws and issuing new rules and guidance on employee leave taken as a result of COVID-19.

State actions on employee leave come in addition to paid employee leave required by the Families First Coronavirus Act passed by Congress.

Key features of new laws and regulations include the length of leave, compensation for leave, and eligibility requirements for leave.

Recommendations

Employers should stay alert to the following actions on the state level:

- New employee leave laws and regulations
- Changes to existing laws and rules on employee leave
- Guidance on the application of existing rules and laws on COVID-19 circumstances

States Update Employee Leave Requirements for Coronavirus

In response to the coronavirus (COVID-19) pandemic, states have passed new laws and issued new regulations and guidance about employee leave taken for COVID-19 reasons. These provisions are in addition to the federal Emergency Paid Sick Leave and Emergency Family and Medical Leave Expansion requirements passed on March 18 as part of the [Families First Coronavirus Response Act \(FFCRA\)](#).

In general, employee leave permitted under new state COVID-19 rules and guidance varies with respect to factors like the employers and employees covered by the leave, the length and purpose of the leave, whether the leave is compensated and at what rate, and whether the leave is provided under a new law or rule, or covered under an existing provision.

This Compliance Bulletin briefly describes new state employee leave provisions and guidance enacted or issued in response to the COVID-19 pandemic, along with links to government resources providing further information. Information about similar measures in select major cities is also included. The document will be updated with additional new employee leave rules in this rapidly changing compliance area.

Action Steps

Employers should monitor the websites of their state departments of labor for new laws, rules and guidance about COVID-19-related employee leave.



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California

The California Labor Commissioner has issued [FAQs](#) on employee leave options, compensation and salary in the context of COVID-19. In addition, Governor Newsom issued an [executive order](#) requiring large employers to provide up to 80 hours of paid leave for food sector workers for certain COVID-19-related reasons. Covered workers include farm workers, grocery workers and food delivery workers, among others. The measure was intended to provide paid leave for employees not covered by FFCRA's paid leave provisions. [Click here](#) for more information.

- Long Beach—Effective May 19, 2020, a Long Beach [ordinance](#) imposes a paid sick leave requirement on employers that have 500 or more employees nationally, and that are not required to provide FFCRA emergency paid sick leave. Under the ordinance, full-time employees are entitled to 80 hours of paid leave, and part-time employees are eligible for paid leave in an amount equal to their average number of work hours over a two-week period, for specified COVID-19-related reasons. As with the FFCRA, different rates of compensation apply, depending on the reason for leave. The ordinance also contains pay caps and employee and employer exceptions, such as for health care worker and emergency responder employees (as defined in the ordinance).
- Los Angeles—Mayor Eric Garcetti has issued a [public order](#), effective April 10, 2020, requiring up to 80 hours of supplemental paid sick leave for certain workers for specified COVID-19-related reasons. The order applies to private employers with 500 or more employees within the city of Los Angeles, or 2,000 or more employees within the United States. The order includes employer and employee exemptions, and pay caps apply. The city has issued [rules](#) to implement the order.
- Los Angeles County—Under an [urgency ordinance](#), employees in unincorporated areas of Los Angeles County are entitled to 80 hours of supplemental paid sick leave for specific COVID-19-related reasons, retroactive to March 31, 2020. Part-time employees receive paid sick leave equal to their average two weeks' pay. Pay is capped at \$511 per day and \$5,110 total.

The ordinance applies to employers with 500 or more employees nationally, but employers covered by the FFCRA or the state order requiring paid leave for food sector employees are exempt. Employees who are emergency responders or health care providers, as defined in the ordinance, are not entitled to the leave.

- Oakland—On May 12, 2020, Oakland passed a [law](#) requiring employers with 500 or more employees to provide their workers with emergency paid sick leave for specified COVID-19-related reasons, including employees at least 65 years old or at other risk of serious illness from COVID-19 exposure. The law took effect immediately upon passage. Full-time workers receive 80 hours of leave, while part-time workers are entitled to an amount of leave equal to their average work hours over a 14-day period, based on hours worked during the period Feb. 3 - March 4, 2020. Pay caps and exemptions, including for health care worker and emergency responder employees, apply.
- San Francisco—As of April 17, 2020, the San Francisco Public Health Emergency Leave Ordinance requires employers with 500 or more employees worldwide to provide their San Francisco employees with up to 80 hours of emergency paid sick leave for certain coronavirus-related purposes. Click here for [FAQs](#) from the city on the new law.

The city of San Francisco has also passed the Workers and Families First Program, providing \$10 million to



businesses with employees in San Francisco to provide five days of sick leave beyond employers' existing policies. The additional sick leave is available only to employees who have exhausted their currently available sick leave, have exhausted or are not eligible for federal or state supplemental sick leave, and whose employer agrees to extend sick leave beyond current benefits. The city has released an [employer guide](#) on the program.

The city has also published [guidance](#) on San Francisco Paid Sick Leave and the coronavirus.

- San Jose—San Jose has passed a paid sick leave [ordinance](#), effective April 8 – Dec. 31, 2020, in response to the COVID-19 crisis. The ordinance is meant to fill the gaps left by the FFCRA, and it requires employers to provide eligible employees with up to 80 hours of paid sick leave for specified COVID-19 related reasons. The city has issued [FAQs](#) on the ordinance.

Colorado

On April 27, 2020, Colorado amended its emergency regulations mandating paid sick leave for certain workers affected by COVID-19. The regulations require employers in covered industries to provide paid sick leave to symptomatic employees who:

- Are being tested for COVID-19, or
- Are under instructions to quarantine or isolate due to a risk of having COVID-19.

The amendments expanded the list of covered industries to 13, and they increased the amount of leave from four days to 80 hours. Compensation for leave was changed from full pay to two-thirds pay. The changes to the regulations also added “other respiratory symptoms” to “flu-like symptoms” as a supporting factor for leave.

[Click here](#) for more information.

Connecticut

The state has issued [FAQs](#) on the application of various employment laws and programs—including the state's paid sick leave and family leave requirements—to workers and businesses affected by COVID-19.

District of Columbia

On April 10, 2020, Washington, D.C., enacted [the COVID-19 Response Supplemental Emergency Amendment Act](#), which, among other things, requires employers with between 50 and 499 employees to provide their employees with up to 80 hours of paid sick leave for the same reasons leave is permitted under the FFCRA. Employees may take the new leave in addition to any FFCRA leave they may be eligible for. Employers that are health care providers are exempt from the requirement, which took effect upon the law's passage.

As part of earlier [emergency legislation](#), the District expanded its family leave program (DCFMLA) to allow workers to take time off when they or a family member have been advised to quarantine or self-isolate. The law allowing the expansion also eliminates the usual DCFMLA eligibility requirements that:

- The employee has worked for the current employer for one year; and
- The employee has worked 1,000 hours for the current employer during the previous 12 months.

These requirements are waived if the employee is taking leave under the new COVID-19 purpose.



In addition, the new leave requirement applies to all District of Columbia employers; before the expansion, only employers with 20 or more employees were covered by the DCFMLA. The expansion remains in effect for 90 days from its approval on March 17.

Illinois

- Chicago—the city passed an [ordinance](#) banning retaliation against employees for staying home from work for certain COVID-19-related reasons, including caring for others with COVID-19. The law provides employees with a private right of action for violations, allowing damages of three times the wages the employee would have earned and attorneys fees, in addition to other enforcement actions. The ordinance took effect on May 20, 2020.

Michigan

Under an April 2020 executive [order](#), Michigan employers are prohibited from discharging, disciplining or otherwise retaliating against employees for staying home when they are at particular risk of infecting others with COVID-19. If employees have exhausted their paid leave, they must be allowed to take leave as unpaid. The order applies to employees who themselves, or whose close contacts, test positive for COVID-19 or display one or more of the principal symptoms of COVID-19.

Nevada

The Nevada Labor Commissioner’s Office has issued [guidance](#) on employees’ use of leave for COVID-19 purposes under the state’s new paid leave law. According to the guidance, employees may elect to use available paid leave or other applicable leave while out on a mandatory government quarantine, but employers may not require that employees use the leave for this purpose.

New Jersey

Recently passed [legislation](#) in New Jersey prohibits employers from terminating or refusing to reinstate employees for taking time off (as instructed by a medical professional) due to COVID-19. Another new [law](#) expands the definition of “serious health condition” in the state’s temporary disability insurance (TDI) and family leave insurance (FLI) programs to allow benefits when a person is diagnosed with or suspected of exposure to a communicable disease, or to take care of a family member similarly affected.

The legislation also expands New Jersey’s earned sick leave law to permit the use of earned sick time for isolation or quarantine recommended or ordered by a provider or public health official as a result of suspected exposure to a communicable disease, or to care for a family member under similar isolation or quarantine.

An additional [law](#) enacted on April 14, 2020, expands the state’s Family Leave Act to allow employees to take up to 12 weeks of unpaid time off to care for a family member as a result of an epidemic of a communicable disease, or efforts to prevent spread of a communicable disease. The job-protected leave also applies to employees requiring leave to provide care or treatment for their child if the child’s school or place of care is closed in response to a public health emergency.

The state’s Department of Labor and Workforce Development has developed [printable guides](#) outlining COVID-19–related benefits for New Jersey employees. These guides explain the applicability of benefits like earned sick leave, unemployment insurance, temporary disability and family leave insurance, and workers’ compensation in various COVID-19-related situations.



New York

New York state enacted a [new law](#) providing leave for COVID-19-related reasons, effective March 18, 2020. The leave applies to employees who are under a quarantine or isolation order. Whether and how much employee compensation is required during the leave depends on the size and net income of the employer, as follows:

- **\$1 million or less, and up to 10 employees:** Unpaid leave through the end of the quarantine or isolation. (Employees are eligible for paid family leave and disability benefits.)
- **More than \$1 million, and up to 10 employees:** Leave through the end of the quarantine or isolation, at least five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **Between 11 and 99 employees:** Leave through the end of the quarantine or isolation, five days of which must be paid. (After five days, employees are eligible for paid family leave and disability benefits.)
- **100 or more employees:** 14 days of paid sick leave during quarantine or isolation.
- **Public employers:** 14 days of paid sick leave during quarantine or isolation.

The law also allows paid family leave for employees to care for children under a quarantine or isolation order. Employees eligible for federal COVID-19-related leave may take state leave only to the extent that it exceeds the federal leave. Exceptions apply for asymptomatic or undiagnosed employees who can work virtually, and for employees who traveled to affected regions not for work. The state has issued [FAQs](#) on the new law. For further information, contact the [New York Department of Labor](#).

Oregon

The Oregon Bureau of Labor and Industries issued a [temporary rule](#) clarifying that Oregon family leave covers an employee's absence to care for his or her child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.

Oregon has also issued [guidance](#) on the use of sick time (which may also be used for public health school closures) in the context of COVID-19.

Pennsylvania

- Philadelphia—Under [emergency regulations](#), employees covered by the city's [sick leave law](#) may use that leave for specified COVID-19-related reasons. [Click here](#) for more information.

Rhode Island

The Rhode Island Division of Labor and Training is waiving certain eligibility requirements for individuals filing COVID-19-related claims under the state's temporary disability insurance and temporary caregiver insurance programs. The Division has developed a [fact sheet](#) with further information.

Washington

- Seattle—On June 1, 2020, the Seattle City Council passed an [ordinance](#) requiring food delivery network companies and transportation network companies to provide gig workers working in Seattle with paid sick and paid safe time during the COVID-19 emergency. The ordinance covers employers with at least 250 gig workers worldwide, and it mandates at least one day of earned sick and safe time for every 30 days worked in Seattle. Accrual is retroactive to Oct. 1, 2019, or the beginning of employment, whichever occurred or occurs later.

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The mayor is expected to sign the measure, which will take effect 30 days later. The law will remain in effect for three years after the end of the civil emergency proclaimed by the mayor on March 3, 2020; three years after any Seattle COVID-19 civil emergency proclaimed by a public official; or on Dec. 31, 2023, whichever is latest.

In addition, an [emergency rule](#) makes it an impermissible unreasonable burden under the city's paid sick and safe time law for employers to require verification of an employee's illness from a health care provider. Alternative means of verification are suggested in the rule. The rule remains in effect until June 7, 2020.