



Coronavirus (COVID-19) Update

March 25, 2020

The Coronavirus (COVID-19) is impacting businesses of all sizes, industries and locales. Our goal is to provide you with currently available information regarding COVID-19’s impact on leave of absence programs, but please know that this information is subject to change as the situation continues to evolve.

This memo covers the following:

Updates

- 1) Families First Coronavirus Response Act
- 2) Expansion of New York Disability, Paid Family Leave and Introduction of “Quarantine Leave”

New Content

- 3) Expansion of Oregon Family Leave Act (OFLA) in Response to COVID-19
- 4) Expansion of Seattle Paid Sick Leave in Response to COVID-19
- 5) Expanded Guidance on Colorado’s Mandatory Paid Sick Leave
- 6) District of Columbia Emergency Expansion of D.C. Family and Medical Leave Act (DCFMLA)
- 7) Clarifying Guidance on San Francisco’s Paid Sick Leave in Response to COVID-19

Update: Families First Coronavirus Response Act

The Department of Labor has issued preliminary guidelines on Families First Coronavirus Response Act. Of note, the DOL has amended the effective date of FFCRA to April 1, 2020 and clarified that FFCRA benefits will not be retroactively available. Instead, FFCRA benefits are available for leave taken on/after April 1, 2020. Additional information will be provided in HUB International’s Frequently Asked Questions (FAQ) EBook, which will be published weekly.

The preliminary guidance provided by the DOL, including Fact Sheets for Employers and Employees and a Questions and Answers document can be found here:

<https://www.dol.gov/newsroom/releases/whd/whd20200324>

Disclaimer: Neither Hub International Limited nor any of its affiliated companies is a law or accounting firm, and therefore they cannot provide legal or tax advice. The information herein is provided for general information only and is not intended to constitute legal or tax advice as to an organization’s specific circumstances. You should consult an attorney, accountant, or other legal or tax professional regarding the application of the general information provided here to your organization’s specific situation in light of your organization’s particular needs.

Update: Expansion of New York Disability, Paid Family Leave and Introduction of “Quarantine Leave” – Effective March 18, 2020

On March 18, New York’s Quarantine Leave law and expansion of New York’s Disability and Paid Family Leave benefits went into effect. Additional regulations from the Commissioner of Labor are expected, however, noted below are the key provisions of the new Quarantine Leave (sick leave) and the expanded Disability and Paid Family Leave benefits.

Quarantine Leave (Sick Leave)

Covered Employer: All New York employers are subject to the new Quarantine Leave, including public employers. Public employers include “the state, cities, counties, towns, village school districts, and any other public benefit corporation, agency, or instrumentality of governmental power under the laws of the state.”

Qualifying Reason(s): Rights under the Quarantine Leave occur if an employee is unable to work as the result of a “mandatory or precautionary order of quarantine or isolation due to COVID-19.” This order would have to be issued by the State of New York, New York Department of Health, Local Board of Health or any other government entity sanctioned to issue such an order. The Quarantine Leave clarifies that leave benefits are not available under the following circumstances:

- 1) employees who self-elect to isolate or quarantine;
- 2) employees who are subject to quarantine as the result of foreign travel if the travel was a) not related to work and b) the employee was notified of both the travel warnings and exclusions of the Quarantine Leave Law before the travel occurred;
- 3) if the employee is no longer working as the result of business closure due to COVID-19-related reasons—in this case, employees may file for unemployment benefits; or
- 4) asymptomatic employees who are subject to quarantine or isolation order but are able to work remotely.

Relative to #3 above, it is not clear if employees are eligible for Quarantine Leave benefits if their employer’s business closure is the result of ordered mandatory or precautionary quarantine.

Job Restoration: Employees who take Quarantine Leave are entitled to job restoration at the end of such leave

Quarantine Leave Benefit: The amount of sick leave benefit under the Quarantine Leave is dependent on the employer’s size, as summarized in the table on the next page. Sick time provided under Quarantine Leave is in addition to any other paid time off the employer may already provide.

The rest of this page is left intentionally blank.

Employer Size/Group	Sick Leave Benefit under Quarantine Leave
Employers with >100 employees <u>and</u> public employers	Employer must provide at least 14 paid sick days during quarantine leave period. The employer is not required to provide more paid or unpaid sick days beyond the 14 days noted above, presumably because quarantines are expected to end after 14 days.
Employers with 11-99 employees <u>and</u> employers with <10 employees and 2019 net income of >\$1M	Employer must provide at least 5 paid sick days during quarantine leave period. The employer must continue to provide unpaid sick days thereafter until the quarantine is terminated.
Employers with <10 employees and 2019 net income of <\$1M	Employer must provide unpaid sick days during quarantine leave period until the quarantine is terminated.

Expanded Disability and Paid Family Leave Benefits

Prior to COVID-19, New York had statutorily-mandated Disability (DBL) and Paid Family Leave (PFL) benefits. These two programs have been expanded in response to COVID-19, making New York the fifth state behind California, Washington, New Jersey and Rhode Island to expand state Disability, Paid Family or Paid Family Medical Leave requirements. Of note, it appears that the expansion of New York’s DBL and PFL benefits are temporary for purposes of the Quarantine Leave and is not intended to expand DBL/PFL benefits/rights once COVID-19 subsides. As part of this expansion, New York has 1) waived the seven-day elimination period for DBL benefits and 2) expanded PFL benefits to provide paid leave if an employee is unable to work due to care for his/her child who is subject to a mandatory or precautionary quarantine/isolation due to COVID-19.

Similar to Sick Leave, employees may receive Disability (DBL) and Paid Family Leave (PFL) benefits if the employee is unable to work because of a mandatory or precautionary order of quarantine or isolation due to COVID-19. DBL/PFL benefits are available to employees who are unable to work on an ongoing basis beyond the exhaustion of paid sick time provided under Quarantine Leave. Since quarantine periods are presumed to be 14 days long, and employers with *more* than 100 employees are provided 14 paid sick days under the Quarantine Leave, it appears that the expanded DBL/PFL benefits are only available to employers with *less* than 100 employees.

Ordinarily, employees are unable to receive DBL and PFL benefits simultaneously. However, in the narrow situation of mandatory or precautionary quarantine or isolation due to COVID-19 (excluding when an employee’s child is subject to a mandatory or precautionary quarantine/isolation), employees may receive DBL and PFL benefits concurrently. To certify for DBL/PFL benefits, the employee may furnish their order for mandatory or precautionary quarantine/isolation. The State has also released new DBL and PFL forms.

Of greatest significance is the maximum weekly benefit employees may receive from DBL/PFL when unable to work due to quarantine/isolation. Again, DBL and PFL are available when the employee has exhausted all paid sick days provided under the Quarantine Leave and access to the additional DBL and PFL benefits likely impact employers with less than 100 employees. In

those cases, employees may receive a combined maximum of \$2,884.62 per week. The maximum weekly benefit under PFL continues to be 60% to \$840.70 (which was the maximum pre-COVID-19). Thereafter, employees will receive DBL benefits to match their full wages up to \$2,043.92, a significant increase from DBL's \$170 weekly benefit. We expect that employees approved for DBL benefits for non-COVID-19 reasons will continue to receive a maximum of \$170 per week.

Interaction with Federal Families First Coronavirus Response Act (FFCRA)

New York's Quarantine Leave benefits are offset by paid leave benefits provided under FFCRA. Effectively, this means:

- employers with more than 500 employees will have full access to New York's Quarantine Leave and expanded DBL/PFL benefits, since FFCRA does not apply to employers with more than 500 employees; and
- employees of employers with 100-499 employees are eligible to receive up to 80 hours (10 days) of Emergency Paid Sick Leave under FFCRA and an additional four paid sick days under New York's Quarantine Leave, resulting in a combined total of 14 paid sick days.

At this time, it is not clear whether employers with fewer than 100 employees and are subject to providing five (5) days of paid sick leave under New York's Quarantine Leave will experience a similar coordination between the five (5) Quarantine Leave days and FFCRA's Emergency Paid Sick Leave.

Expansion of Oregon Family Leave Act (OFLA) in Response to COVID-19 – Effective March 17, 2020

Under emergency order, Oregon's Family Leave Act (OFLA) has expanded to specifically provide leave to care for a child when the child's school has been closed to a public health emergency. Pre-COVID-19, OFLA provided leave for several qualifying reasons, including "sick child leave," which provides leave to care for a child suffering from an illness, injury or condition that requires home care but the child is not experiencing a serious health condition. OFLA expanded "sick child leave" to include leave to care for a child as the result of school closures. The expansion of OFLA's sick child leave will apply through September 13, 2020. We are awaiting further clarification on how OFLA, then, will coordinate with FFCRA's Emergency FMLA.

Expansion of Seattle Paid Sick Leave in response to COVID-19 – Effective March 18, 2020

Pre-COVID-19, Seattle required employers to provide Paid Sick and Safe Time (PSST) that may be used for the following covered reasons:

- an employee's illness, injury or health condition;
- care of a family member with an illness, injury or health condition;

- business closure by public official for any health-related reason;
- an employee's need to care for a child whose school or place of care has been closed by a public official; or
- for certain reasons related to domestic violence, sexual assault or stalking.

Effective March 18, PSST was amended and expanded as follows:

- 1) PSST may be used when a family member's school or place of care has been closed, and
- 2) Employees of "Tier 3" employers (employers with more than 250 employees) may use PSST if the business closes for any health-related reason.

Prior to COVID-19, PSST was available only if the child's school or childcare facility was closed by a public official. Now, PSST includes other family members and does not require the school or care facility to be closed by a public official order. Furthermore, prior to COVID-19, Tier 3 employers were not required to allow employees to use PSST time when the business closed for any health-related reason; this has been since amended so that Tier 3 employees may use their PSST time if their employer closes business due to COVID-19.

Expanded Guidance on Colorado's Mandatory Paid Sick Leave

On March 11, Colorado enacted an emergency rule to require employers in select industries to provide up to four (4) paid sick leave days when an employee presented with flu-like symptoms and was being tested for COVID-19. Since then, the Colorado Department of Labor and Employment (CDLE) has released further clarity on its rules.

- The four paid sick leave days are *calendar days*. The employee would receive pay under paid sick leave only for the days he/she would have actually worked. For example, if the employee begins to use the four paid sick days on a Thursday, but would not have otherwise worked on Saturday and Sunday, then a) the four days of paid sick time expire on Sunday, and b) the employee would be paid sick time for Thursday and Friday only.
- Clarification on impacted industries:
 - "Leisure and hospitality" include arts, entertainment and recreation industries, and accommodation and food services.
 - "Food services" is defined as places that prepare food and beverages for consumption on or off premises.
 - "Child care" is defined as establishments that provide care for young children.
 - "Education" includes public, private and non-profit institutions that provide teaching, instruction or training in a wide variety of subjects.
 - "Home health" includes establishments that provide skilled medical, nursing, and other health or personal care services in the patient's home.

- “Operating a nursing home” refers to establishments that offer inpatient nursing and rehabilitation services and generally with a permanent core staff.
- “Operating a community living facility” refers to establishments that provide a range of residential and personal care services for the elderly or others who are unable to care for themselves or who do not wish to live independently.
- CDLE clarifies that employees are expected to provide reasonable notice as soon as practicable absent any extenuating circumstances, such as being too ill to communicate. The employee must also advise the employer within 24 hours that he/she was prescribed to be tested for COVID-19.
- CDLE clarifies that employers may require employees to furnish documentation to substantiate the need for paid sick leave. The documentation may be provided either from the health care provider who prescribed the COVID-19 test or the health care provider who administered the COVID-19 test. If such documentation cannot be provided, the employee may submit any other documentation available along with a written attestation that the aforementioned documents were unavailable for submission. Employees are expected to provide supporting certification by the end of their illness or their return to work, whichever occurs sooner.

District of Columbia Emergency Expansion of D.C. Family and Medical Leave Act (DCFMLA) – Effective March 17, 2020

Prior to COVID-19, DCFMLA provided sixteen weeks of family leave and an additional sixteen weeks of medical leave for the employee’s own health condition. In response to COVID-19, DCFMLA has expanded to provide “declaration of emergency” (“DOE) leave to employees who are unable to work as the result of public health emergency as declared by the Mayor. The need for DOE leave may be the employee’s self-quarantine or self-isolation at the recommendation of the Mayor, Department of Health, a medical professional or any other applicable agency. DOE leave is also available if the employee is quarantined or isolated by government mandate.

DOE leave waives the typical DCFMLA eligibility requirements and will continue until the period of declared public health emergency terminates. Like DCFMLA, DOE leave is unpaid.

Clarifying Guidance on San Francisco’s Paid Sick Leave in Response to COVID-19 – As of March 24, 2020

San Francisco’s Office of Labor Standards Enforcement (OLSE) has issued the following guidance on the use of San Francisco paid sick leave during COVID-19. San Francisco already mandated paid sick time prior to COVID-19.

- 1) Employees may not be required to furnish a doctor’s note or other documentation for the use of paid sick leave in response to COVID-19 at this time. This rule is only temporary and in place for the duration of San Francisco’s Local Health Emergency. OSLE may revoke this rule sooner.

- 2) Employees who have been laid off by their employer are not eligible for paid sick leave provided under San Francisco's Paid Sick Leave Ordinance.
- 3) Employees whose work hours are reduced or eliminated as the result of COVID-19 are not eligible to use accrued paid sick leave to account for/replace the time not worked/eliminated. By contrast, employees who continue to be scheduled to work may use available paid sick leave for any qualifying paid sick leave reason. These reasons include:
 - a. employee is off work because of required or recommended quarantine or isolation as ordered by a public health official or health care provider;
 - b. employee is off work because the employee falls within the definition of a "vulnerable population" as defined by San Francisco's Department of Public Health's March 6, 2020 guidelines (including any subsequent updates);
 - i. "vulnerable population" is considered a person who is 60 years old or older or a person with a health condition (e.g., heart disease, lung disease, etc.);
 - c. employee is off work because the employer or work location is temporarily closed by order or recommendation of a public official;
 - d. employee is off work to care for a family member who is not sick but is quarantined or isolated by order or recommendation of a public health official or health care provider; or
 - e. employee is off work to care for a family member whose school, child care provider/facility, senior care provider or work is temporarily closed by order or recommendation of a public official.

Summary of COVID-19 Impacts to Absence Management

Topic	Status	Notes
FMLA	Updated	NEW – FFCRA’s effective date has been amended from April 2, 2020 to April 1, 2020 and the DOL confirmed that benefits are not retroactive.
ADA	No change	Employers <i>may</i> test employees’ temperatures because the CDC and state/local health authorities have acknowledged community spread of COVID-19.
Short Term Disability (group insurance)	No change	<ul style="list-style-type: none"> Nearly all STD insurance carriers are remaining status quo in claims handling procedures; will review each claim submitted on a case-by-case basis. Need to satisfy definition of disability under the plan. Carriers have noted that they are willing to work with ASO/self-funded STD clients to expand STD benefits to include quarantine if the client desires. However, this process would require employers to clearly establish parameters for how to handle this.
Statutory Disability and Paid Family Medical Leave	Updated	<ul style="list-style-type: none"> NEW – New York – DBL and PFL expansion, DBL 1-week elimination period waived NEW – Oregon – OFLA expansion (not a paid leave) NEW – District of Columbia – DCFMLA expansion (not a paid leave) California – SDI and PFL expansion, SDI 1-week elimination period waived Washington – PFML expansion New Jersey – TDB and FLI expansion Rhode Island – TDI and TCI expansion, including waiver of 1-week elimination period
Paid Sick Leave (state or municipal required)	Updated	<ul style="list-style-type: none"> NEW – FFCRA’s effective date has been amended from April 2, 2020 to April 1, 2020 and the DOL confirmed that benefits are not retroactive. NEW – New York – paid sick leave expansion NEW – Seattle – paid sick leave expansion Generally entitles employees to use paid sick leave for own health condition, family health condition, as well as being away from work due to child’s school or childcare facility closure. Colorado – emergency sick leave mandate for select industries
Paid Time Off (employer programs)	No change	<p>Different employers are approaching this in different ways: <i>(not an exhaustive list)</i></p> <ol style="list-style-type: none"> Do not provide more paid time off; employees use paid time off they currently have access to Provide paid sick time to those who currently do not have access to paid sick time – may be in addition to other paid time off the employee currently has access to Provide “relief pay” or “pandemic pay” – largely akin to #2 above