

STATE OF NEW YORK

8091

IN SENATE

March 18, 2020

Introduced by Sen. RAMOS -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 precau-
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
18 paid sick leave and unpaid leave until the termination of any mandatory
19 or precautionary order of quarantine or isolation. After such five days
20 of paid sick leave, an employee shall be eligible for paid family leave
21 benefits and benefits due pursuant to disability pursuant to this act.

22 (b) For employers with between eleven and ninety-nine employees as of
23 January 1, 2020, each employee who is subject to a mandatory or precau-
24 tionary order of quarantine or isolation issued by the state of New
25 York, the department of health, local board of health, or any govern-
26 mental entity duly authorized to issue such order due to COVID-19, shall

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

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1 be provided with at least five days of paid sick leave and unpaid leave
2 until the termination of any mandatory or precautionary order of quaran-
3 tine or isolation. After such five days of paid sick leave, an employee
4 shall be eligible for paid family leave benefits and benefits due pursu-
5 ant to disability pursuant to this act.

6 (c) For employers with one hundred or more employees as of January 1,
7 2020, each employee who is subject to a mandatory or precautionary order
8 of quarantine or isolation issued by the state of New York, the depart-
9 ment of health, local board of health, or any governmental entity duly
10 authorized to issue such order due to COVID-19, shall be provided with
11 at least fourteen days of paid sick leave during any mandatory or
12 precautionary order of quarantine or isolation.

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

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

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

40 3. Upon return to work following leave taken pursuant to this act, an
41 employee shall be restored by his or her employer to the position of
42 employment held by the employee prior to any leave taken pursuant to
43 this act with the same pay and other terms and conditions of employment.
44 No employer or his or her agent, or the officer or agent of any corpo-
45 ration, partnership, or limited liability company, or any other person,
46 shall discharge, threaten, penalize, or in any other manner discriminate
47 or retaliate against any employee because such employee has taken leave
48 pursuant to this act.

49 4. An employee shall not receive paid sick leave benefits or any other
50 paid benefits provided by any provisions of this section if the employee
51 is subject to a mandatory or precautionary order of quarantine because
52 the employee has returned to the United States after traveling to a
53 country for which the Centers for Disease Control and Prevention has a
54 level two or three travel health notice and the travel to that country
55 was not taken as part of the employee's employment or at the direction
56 of the employee's employer, and if the employee was provided notice of

1 the travel health notice and the limitations of this subdivision prior
2 to such travel. Such employee shall be eligible to use accrued leave
3 provided by the employer, or to the extent that such employee does not
4 have accrued leave or sufficient accrued leave, unpaid sick leave shall
5 be provided for the duration of the mandatory or precautionary quaran-
6 tine or isolation.

7 5. The commissioner of labor shall have authority to adopt regu-
8 lations, including emergency regulations, and issue guidance to effectu-
9 ate any of the provisions of this act. Employers shall comply with regu-
10 lations promulgated by the commissioner of labor for this purpose which
11 may include, but is not limited to, standards for the use, payment, and
12 employee eligibility of sick leave pursuant to this act.

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

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

26 8. Notwithstanding any other provision of law, and for purposes of
27 this act only, for purposes of article 9 of the workers' compensation
28 law, "family leave" shall mean: (a) any leave taken by an employee from
29 work when an employee is subject to a mandatory or precautionary order
30 of quarantine or isolation issued by the state, the department of
31 health, a local board of health, or any government entity duly author-
32 ized to issue such order due to COVID-19; or (b) to provide care for a
33 minor dependent child of the employee who is subject to a mandatory or
34 precautionary order of quarantine or isolation issued by the state, the
35 department of health, a local board of health, or any government entity
36 duly authorized to issue such order due to COVID-19.

37 9. Notwithstanding any other provision of law, and for purposes of
38 this act only, for purposes of article 9 of the workers' compensation
39 law, disability and family leave benefits pursuant to this act may be
40 payable concurrently to an eligible employee upon the first full day of
41 an unpaid period of mandatory or precautionary order of quarantine or
42 isolation issued by the state of New York, the department of health, a
43 local board of health, or any government entity duly authorized to issue
44 such order due to COVID-19, provided however, an employee may not
45 collect any benefits that would exceed \$840.70 in paid family leave and
46 \$2,043.92 in benefits due pursuant to disability per week.

47 10. 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, the maximum weekly benefit which the employee is entitled to
50 receive for benefits due pursuant to disability pursuant to subdivision
51 six of this section only shall be the difference between the maximum
52 weekly family leave benefit and such employee's total average weekly
53 wage from each covered employer up to a maximum benefit due pursuant to
54 disability of \$2,043.92 per week.

55 11. Notwithstanding subdivision 7 of section 590, and subdivision 2 of
56 section 607, of the labor law, a claim for benefits under article 18 of

1 the labor law due to closure of an employer otherwise subject to this
2 section for a reason related to COVID-19 or due to a mandatory order of
3 a government entity duly authorized to issue such order to close such
4 employer otherwise subject to this section, shall not be subject to a
5 waiting period for a claim for benefits pursuant to such title.

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

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

16 14. Nothing in this section shall be deemed to impede, infringe,
17 diminish or impair the rights of a public employee or employer under any
18 law, rule, regulation or collectively negotiated agreement, or the
19 rights and benefits which accrue to employees through collective
20 bargaining agreements, or otherwise diminish the integrity of the exist-
21 ing collective bargaining relationship, or to prohibit any personnel
22 action which otherwise would have been taken regardless of any request
23 to use, or utilization of, any leave provided by this act.

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

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

47 (b) On or before January 1, 2022, an initial report shall be provided
48 to the speaker of the assembly, the chair of the assembly ways and means
49 committee and the chair of the assembly labor committee, the temporary
50 president of the senate, the chair of the senate finance committee and
51 the chair of the senate labor committee. Such report shall include:
52 the total number of claims filed pursuant to this section for (i) family
53 leave benefits, and (ii) benefits due to disability, as a result of a
54 mandatory or precautionary order of quarantine or isolation due to
55 COVID-19; the aggregate amount of paid family leave claims and disabili-
56 ty claims; the total amount of the claims paid for out of the risk

1 adjustment pool; the threshold limits established by the department of
2 financial services; and any other information the superintendent of
3 financial services deems necessary to provide to the legislature.

4 (c) On or before January 1, 2025, a final report shall be provided to
5 the speaker of the assembly, the chair of the assembly ways and means
6 committee and the chair of the assembly labor committee, the temporary
7 president of the senate, the chair of the senate finance committee and
8 the chair of the senate labor committee. Such report shall include the
9 balance of the risk adjustment pool, if any, the total amount collected
10 through the repayment mechanism established by the department of finan-
11 cial services including interest; and any other information the super-
12 intendent of financial services deems necessary to provide to the legis-
13 lature. If there exists a balance in the risk adjustment pool, the
14 final report shall provide a timeline by which repayment will be
15 completed.

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

30 § 2. This act shall take effect immediately.