



EMPLOYMENT LAW ALERT

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NEW YORK PROVIDES NEW GUIDANCE REGARDING USE OF NYS COVID-19 SICK LEAVE

On January 20, 2021, the New York State Department of Labor (“NYSDOL”) issued new guidance regarding the use of New York COVID-19 sick leave. This guidance provided long awaited answers relating to employees returning to work without a negative COVID-19 test result, the potential for subsequent orders of quarantine/isolation and the payment of COVID-19 sick leave by employers.

This guidance sets forth two important paragraphs relating to returning to work and the payment of COVID-19 sick leave (emphasis added):

1. An employee who returns to work following a period of mandatory quarantine or isolation **does not need to be tested** before returning to work, except for nursing home staff. However, an employee who subsequently receives a positive diagnostic test result for COVID-19 **must not report to work**. The employee shall be deemed to be subject to a mandatory order of isolation from the Department of Health and shall be **entitled to sick leave** as required by New York’s COVID-19 sick leave law, whether or not the employee already has received sick leave as required by the law for the first period of quarantine or isolation. However, the employee **must submit documentation** from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19.
2. An employee who is subject to an order of quarantine or isolation but continues to test positive for COVID-19 after the end of such quarantine or isolation period **must not report to work. Please note that an employee is not recommended to be tested to discontinue isolation or quarantine**. The employee shall be deemed to be subject to a second mandatory order of isolation from the Department of Health and shall be **entitled to sick leave** as required by New York’s COVID-19 sick leave law for the second period of isolation. However, the employee **must submit documentation** from a licensed medical provider or testing facility attesting that the employee has received a positive diagnostic test for COVID-19 after completing the initial period of isolation. [1]

[1] The employee does not need to submit documentation of a positive result, under either paragraph, if the employer gave the employee the test for COVID-19 that showed the positive result.



Additionally, if an employer requires an employee to remain out of work when the employee is no longer subject to a mandatory or precautionary order of quarantine, the employer is required to continue to pay the employee (at the employee's regular rate of pay) until the employer permits the employee to return to the workplace or the employee becomes subject to a mandatory or precautionary order of quarantine or isolation. If the employee again becomes subject to a mandatory or precautionary order of quarantine or isolation, then the employee will receive COVID-19 sick leave as required by law.

Notably, NYSDOL has clarified that **an employee may be eligible for COVID-19 sick leave up to three times**. However, the second and third orders of quarantine or isolation making an employee eligible for the leave must be based on a positive COVID-19 test in accordance with paragraphs 1 and 2 outlined above.

Employers must act swiftly to update their policies and procedures relating to COVID-19 leave to ensure they comply with this new guidance. As the landscape of the rules and regulations surrounding COVID-19 continue to rapidly change, it is essential that employers remain vigilant to ensure that they remain compliant with all of their legal obligations.

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