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# *Eye on Washington*
# State and Local Update

## Timely, topical insights on a variety of payroll and reporting issues.

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# State Leave

## Arizona Issues Guidance on State Paid Sick Leave Law and COVID-19

The Industrial Commission of Arizona, which enforces and implements Arizona's Paid Sick Leave Law (also known as the Fair Wages and Healthy Families Act), has issued guidance to employers and employees regarding the effect of the coronavirus (COVID-19) pandemic on the use of paid sick leave in Arizona. The Commission's guidance also addresses how the new federal Families First Coronavirus Response Act (FFCRA) will affect Arizona businesses and workers.

**Background:**

Under Arizona's Paid Sick Leave law, employers with at least 15 employees are required to provide employees with up to 40 hours of earned paid sick time per year. Employers with fewer than 15 employees must provide up to 24 hours of earned paid sick time per year.

In addition to use for an employee's own illness, or to care for an ill family member, the Paid Sick Leave law, specifically A.R.S. § 23-373, expressly provides that employees may use paid sick leave for the following reason:

"Earned paid sick time shall be provided to an employee by an employer for:

> ... Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease;..."

It is important to note that on March 30, 2020, Governor Doug Ducey announced the extension of school closures through the remainder of the school year.

**Industrial Commission Guidance**

In its guidance, the Industrial Commission clarified that employees may use their accrued and earned paid sick leave subject to any usage limitations for all of the following reasons:

- If an employee, or a family member, contracts COVID-19;
- If an employee, or a family member, must be tested for COVID-19;
- If the employee's place of business has been closed "by order of a public official due to the COVID-19 public health emergency;
- If an employee must care for a child whose school has been closed due to COVID-19, but only if the school has been closed by an order of a public official due to a public health emergency; and
- If an employee is quarantined or must care for a family member who has been quarantined due to a potential exposure to COVID-19.

Consistent with recommendations from the Centers for Disease Control and Prevention (CDC), the Industrial Commission encouraged employers to maintain flexible sick leave policies that are consistent with public health guidance. Employers are encouraged to permit employees to stay home if they contract COVID-19 or to care for a sick family member.

If an employee has exhausted accrued earned paid sick time due to circumstances associated with COVID-19, the Industrial Commission encouraged employers to consider additional options, including donating or loaning earned paid sick time to the employee.

The CDC has encouraged employers not to require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare providers and medical facilities may be extremely busy and unable to provide documentation in a timely manner.

### Interplay with FFCRA

The Industrial Commission in its guidance also addressed the interplay between the Arizona Paid Sick Leave law and The Families First Coronavirus Response Act (FFCRA). The FFCRA imposes additional requirements on certain employers with fewer than 500 employees, as part of a nationwide effort to provide relief to employees affected by COVID-19.

The Industrial Commission noted that the paid sick leave provisions of the FFCRA are in addition to any paid sick leave offered by employers, including paid sick time under the Arizona statute. Therefore, employers are not permitted to require an employee to use other paid leave, including Arizona paid sick, before the employee uses paid sick time under the FFCRA.

## Executive Order Provides California Food Sector Employees with Paid Sick Leave

On April 16, 2020, California Governor Gavin Newsom signed an Executive Order to support California workers of large employers in the food sector industry, impacted by the COVID-19 pandemic, with two weeks of paid sick leave. The intent of the Governor's action was to fill in a gap left under the Families First Coronavirus Recover Act (FFCRA) that provides similar paid leave benefits for only employers with fewer than 500 workers.

"Food sector workers" include farmworkers, agricultural workers, those working in grocery stores or fast food chains and delivery drivers. A "hiring entity" is defined as a private sole proprietorship or any kind of private entity whatsoever that has 500 or more employees in the United States.

### Under the Executive Order

- Hiring entities shall provide COVID-19 Supplemental Paid Sick Leave to each food sector worker, who performs work for or through a hiring entity, if the worker is unable to work due to a federal, state, or local quarantine or isolation order; advised by a health-care provider to self-quarantine or self-isolate due to COVID-19 concerns; or prohibited to work by the hiring entity due to concerns over potential transmission.
- An employee is entitled to 80 hours of COVID-19 Supplemental Paid Sick Leave if a worker is considered to work full-time, or work on average of 40 hours per week, and is in addition to other paid sick leave available to the worker.

Additionally, the Executive Order provides health and safety standards to increase worker and customer protection by permitting workers at food facilities to wash their hands every 30 minutes, or as needed, to increase proper sanitation measures.

The Executive Order became effective immediately. A copy may be found at the link below.

**https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf**

## Colorado COVID-19 HELP Rule Modified

ADP® previously reported that on March 11, 2020, the Colorado Department of Labor and Employment (CDLE) issued Colorado Health Emergency Leave With Pay ("Colorado HELP") Rules that require certain employers to provide paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. The rules took effect immediately and remain in effect for 30 days or for the duration of the declared state of emergency, whichever is longer, up to 120 days.

The Colorado HELP Rules originally covered employers engaged in the following industries or workplaces:

- Leisure and hospitality;
- Food services;
- Child care;
- Education at all levels and related services, including but not limited to cafeterias and transportation to, from, and on campuses;
- Home health care (working with elderly, disabled, ill, or otherwise high-risk individuals);
- Nursing homes; and
- Community living facilities.

**Effective April 3, 2020, CDLE amended its HELP rule to also cover workers in the food and beverage manufacturing industry.**

The HELP provisions stipulate the following:

- Covered employers must provide employees with flu-like symptoms, who are being tested for COVID-19, up to four paid sick leave days. The paid leave entitlement ends when employees receive a negative COVID-19 test result.
- If employers already offer a sufficient amount of paid leave, they need not provide additional paid sick leave unless employees have exhausted such leave and then experience a qualifying event.
- Sick leave pay is due for an employee's regularly worked hours at the employee's regular rate.
- Employers must use the same formula they use when calculating the regular rate for overtime purposes. The regular rate includes all forms of wages and compensation.
- For tip-credit employees, the regular rate is the full minimum wage. If an employee's pay rate or hours worked varied before the absence, employers must use the employee's average daily pay for the preceding month.
- A failure to provide paid sick leave will be akin to a failure to pay wages. The state labor department will enforce the rules and investigate alleged violations. Additionally, a private right of action is available.

The Colorado HELP Rules state that, to the extent possible, employers and employees should comply with federal Family and Medical Leave Act (FMLA) procedures for requesting and providing leave. However, employers cannot fire employees if they are unable to provide documentation during a covered absence. Additionally, the rules incorporate the anti-retaliation protections of the Colorado Overtime and Minimum Pay Standards (COMPS) Order Number 36. The Colorado HELP Rules reinforce that the FMLA does not narrow rights and responsibilities of the rules mandate.

For a copy of the amended HELP Rules, paste the following into your browser.

**https://www.colorado.gov/pacific/sites/default/files/7 CCR 1103-10 Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules (Clean) 4.3.20 (1)_0.pdf**

## Connecticut Issues COVID-19 Guidance

The Connecticut Department of Labor issued guidance entitled "Frequently Asked Questions About Coronavirus (COVID-19) For Workers and Employers." The guidance provides no new legal requirements or amendments to existing laws but, instead, analyzes issues raised by the COVID-19 pandemic under existing laws in the areas of unemployment insurance, paid sick leave, wage and hour law and the Connecticut Family and Medical Leave Act ("CTFMLA").

A sampling of the frequently asked questions is as follows:

**Unemployment:**

**How do I file for Unemployment Insurance benefits or get more information about the process and requirements?**

- Please go to www.filectui.com to file with your personal computer, tablet or Smartphone. Click the BLUE button on that page to start your claim. If you are unemployed due to the COVID-19 event, follow the instructions found at this link on how to answer the questions. http://www.ctdol.state.ct.us/UIOnLine/GuideforFilingCTUnemploymentClaims.pdf

**Do I need any paperwork from my employer before I can file for unemployment benefits?**

- You should ask your employer for a Separation Package, available at **http://www.ctdol.state.ct.us/HP/UC-62TwithBabel3-2020.pdf**

  But, do not delay filing your claim for unemployment benefits even if your employer has not issued you any paperwork.
- It is important to file as soon as you become unemployed to avoid being denied benefits. For faster processing of your claim, please have your employer's registration number and a return-to-work date readily available when you file your claim online.

**Paid Sick Leave:**

**Does the Paid Sick Leave (PSL) law cover my absence due to COVID-19?**

- For covered service workers and employers with 50 or more employees, PSL will cover certain absences caused by COVID-19.
- PSL provides up to 40 hours of leave for certain workers per year for the following reasons:
  - A service worker's illness, injury or health condition.
  - The medical diagnosis, care or treatment of a service worker's mental illness or physical illness, injury or health condition.
  - Preventative medical care for a service worker.
  - A service worker's child's or spouse's illness, injury or health condition.
  - The medical diagnosis, care or treatment of a service worker's child's or spouse's mental or physical illness, injury or health condition.
  - Preventative medical care for a child or spouse of a service worker.

**My employer, who has 20 employees in CT, sent me home because I had a fever and then terminated my employment. Can he do that?**

- Employees in CT are generally considered at-will employees, which means that either the employer or the employee is free to end the relationship at any time unless there is an applicable contract or collective bargaining agreement.
- Therefore, in most cases, an employer who is not covered by the CT FMLA (over 75 employees in CT), federal FMLA (50 or more employees in a 75-mile radius) or CT's Paid Sick Leave law (50 employees in CT) may terminate an employee for any reason as long as such termination is not based on an employee's protected status such as the employee's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, including, but not limited to, blindness or status as a veteran or any other applicable contract or law.
- The employer may institute a more lenient absenteeism policy.

**Wages and Hours:**

**If my employer decides not to open the business for the day or my specific work shift, and notifies me not to report for work, must I be paid?**

- If you are a nonexempt "hourly" employee, no. An employer is not required to pay a nonexempt employee for the time in which he or she performs no work.
- If you are an exempt employee and you have worked for any portion of the week, yes. The employer is required to pay you the full weekly salary if you work for any portion of the week.
- Also, it is not permissible for the employer to make any deduction for the time that the exempt employee is absent from work from the employee's accrued Paid Time Off ("PTO") benefits, because Conn. State Agencies Regs. § 31-60-14(b)(2)(A) do not permit a deduction "of any kind" when a lack of work is occasioned by the operating requirements of the employer.

**Connecticut Family and Medical Leave Act ("CTFMLA"):**

**Does the CT FMLA protect my job if my employer sends me home because I have a fever? You may be protected if:**

- You are an eligible employee, who worked for the employer for at least 12 months and 1,000 hours in the past year
- The employer is a covered employer for FMLA purposes (75 or more employees in CT) and you have FMLA time available. Your employer may require you to submit a medical certification from your health care provider, in order to determine if this is a serious health condition under the FMLA. If your health-care provider substantiates a serious health condition, FMLA will protect your job. Also, your employer may institute a more lenient medical certification policy if it so wishes.

**Does the FMLA protect me if my employer sends me home because I told him that my 17-year-old daughter just returned from travel to a Level 3 country and has a cough and a fever?**

You may be protected if:

- You are an eligible employee, the employer is a covered employer for FMLA purposes, and you have FMLA time available.

- Your employer may require you to submit a medical certification from your daughter's health-care provider, in order to determine if she has a serious health condition under the FMLA.
- If her health-care provider substantiates a serious health condition, the FMLA will protect your job. Also, your employer may institute a more lenient medical certification policy if it so wishes.

**If I send an employee home because he told me that his 17-year-old daughter just returned from travel to a Level 3 country, but she has no signs or symptoms of COVID-19, does FMLA protect his job?**

- At this time, if his daughter does not have a serious health condition under the FMLA, then his job will not be protected. You may institute a more lenient absenteeism policy if you so wish.

For a copy of the frequently asked questions, click on the link provided below.

**http://www.ctdol.state.ct.us/DOLCOVIDFAQ.PDF**

## District of Columbia Expands DCFMLA Due to COVID-19

On March 30, 2020, District of Columbia Mayor Muriel Bower signed into law the COVID-19 Response Emergency Amendment Act of 2020 (the "Act"). The Act creates a new category of leave under the District of Columbia Family and Medical Leave Act (DCFMLA), specifically the "declaration-of-emergency" (DOE) leave. The provisions of the Act will remain in place until June 15, 2020, unless extended beyond that date.

The DCFMLA requires employers with 20 or more employees to provide eligible employees with 16 weeks of unpaid family leave and 16 weeks of unpaid medical leave during a 24-month period.

Eligible circumstances for family leave under DCFMLA include the birth of a child, adopting a child, or caring for a child in foster care. Caring for a seriously ill family member is also eligible for family leave. Medical Leave Eligible circumstances for medical leave under DCFMLA includes recovering from a serious illness rendering the employee unable to work.

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Leave under the DCFMLA may be taken in blocks of time, intermittently and, in certain circumstances, at a reduced schedule. Employees can also use any accrued time instead of unpaid leave.

The employer may require medical certification and reasonable prior notice when applicable.

**Amended DCFMLA**

The Act amends the DCFMLA to allow employees to take unpaid, job-protected DOE leave. An employee may take DOE leave if the employee is unable to work as a result of the circumstances giving rise to a public health emergency as declared by the Mayor. The need for such leave can be demonstrated by a recommendation from the Mayor, Department of Health, any other district or federal agency, or a medical professional that the employee self-quarantine or self-isolate or by the declaration of public health emergency. The Mayor has ordered that, effective March 25, 2020, all nonessential businesses cease on-site operations, which would appear to meet the requirements described above.

The Act further amends the DCFMLA so that employers in DC of *all* sizes must provide DOE leave (the DCFMLA generally applies only to employers with 20 or more employees). The Act also waives the DCFMLA's requirement that an employee must work 1,000 hours and 12 months before being eligible for leave for any "employee who has been ordered or recommended to quarantine or isolate, by the Department of Health, any other district or federal agency, or a medical professional."

For a copy of the Act, click on the link provided below.

**http://lims.dccouncil.us/Download/44469/B23-0718-Introduction.pdf**

## Executive Order Expands Michigan Paid Medical Leave Act

The Michigan legislature passed, and the Governor has signed, Senate Bill 1175 which established the "Paid Medical Leave Act" (the "Act"), a paid sick leave law. It became effective on March 29, 2019.

The Act applies to employers with 50 or more individuals regardless of full- or part-time status or how many hours they work. It does not apply to the United States government, other states, or to political subdivisions of other states. Paid medical leave is accrued at a rate of one hour for every 35 actual hours worked; however, an employer is not required to allow accrual of over one hour in a calendar week or more than 40 hours in a benefit year. Employees may take paid medical leave for the following:

- Physical or mental illness, injury, or health condition of the employee or his or her family member.
- Medical diagnosis, care, or treatment of the employee or employee's family member.
- Preventative care of the employee or his or her family member.
- Closure of the employee's primary workplace by order of a public official due to a public health emergency.
- The care of an employee's child whose school or place of care has been closed by order of a public official due to a public health emergency.
- The employee's or his or her family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider.
- For domestic violence and sexual assault situations, employees may use paid medical leave for the following:
  - Medical care or psychological or other counseling.
  - Receiving services from a victim services organization.
  - Relocation.
  - Obtaining legal services.
  - Participation in any civil or criminal proceedings related to or resulting from domestic violence or sexual assault.

### Executive Order No. 2020-36

On April 3, 2020, Michigan Governor Gretchen Whitmer issued an Executive Order (the "Order") which, among other things, expanded the state's Paid Medical Leave Act. The Order stipulates as follows:

- Provides that all individuals who test positive for the coronavirus (COVID-19) or display symptoms of COVID-19 are required to stay at home until three days have passed since the symptoms have resolved, and seven days have passed since the symptoms first appeared or since they were swabbed for a test that yielded a positive result.
- Requires individuals, who have been in close contact with an individual who tests positive or displays symptoms, to remain at home until 14 days have passed since contact with the infected individual. This requirement would not apply to certain workers such as health- care professionals or first responders.
- Protects workers under these directives by prohibiting employers from discharging, disciplining, or otherwise retaliating against an employee following the Order.
- Employers are required to treat an employee as if the employee were taking medical leave under the Paid Medical Leave Act.
- If the employee does not have paid leave, the leave may be unpaid.
- Employers are permitted to deduct these hours from the employee's accrued leave.
- The length of leave is not limited to the amount of leave accrued under the Paid Medical Leave Act and the employee must be permitted to remain away from work for the prescribed period of the Order.
- Employers are not prevented from discharging an employee who is permitted to return to work but fails to do so.

For a copy of Executive Order 2020-36, click on the link provided below.

**https://content.govdelivery.com/attachments/MIEOG/2020/04/03/file_attachments/1418576/EO%202020-36.pdf**

For more information on the Michigan Paid Medical Leave Act, find below a link to frequently asked questions.

**https://www.michigan.gov/documents/lara/Paid_Medical_Leave_Act_FAQ_003_644567_7.pdf**

## New Jersey Enacts Expansion of Leave and Disability Law Benefits Due to Epidemics

On March 25, 2020, New Jersey Governor Phil Murphy signed into law Senate Bill 2304 (S2304) expanding the scope of the New Jersey Earned Sick Leave Law (ESLL), the New Jersey Family Leave Act (FLA), and the New Jersey Temporary Disability Law (TDL) to cover absences related to epidemics such as the coronavirus (COVID-19) pandemic. The law is designed to create immediate enhanced eligibility for employee leaves in New Jersey.

The Legislature, by 78-0 vote, approved the bill and the Governor signed it on the same day the Assembly passed the measure.

### Earned Sick Leave

S2304 amends the Earned Sick Leave Law to expand reasons for use as follows.

(1) The existing law permitted employees to use earned sick leave in the event of a closure of an employee's workplace, school, or child-care facility by order of a public official due to an epidemic or other public health emergency. The amendment further extends the availability of sick leave **"because of a state of emergency declared by the Governor" in connection with an epidemic or other public health emergency**.

(2) In addition to other reasons, an employee may now take Earned Sick Leave when the employee is not able to work because of **"the declaration of a state of emergency by the Governor,"** or a determination by **"a health-care provider or the Commissioner of Health or other public health authority"** that the employee's presence in the community, or the presence of a member of the employee's family in need of care by the employee, would "jeopardize the health of others."

(3) An entirely new reason for use of earned sick leave was added to address a period of quarantine. Now, sick leave may also be taken if, **"during a state of emergency declared by the Governor, or upon the recommendation, direction, or order of a healthcare provider or the Commissioner of Health or other authorized public official, the employee undergoes isolation or quarantine, or cares for a family member in quarantine, as a result of suspected exposure to a communicable disease and a finding by the provider or authority that the presence in the community of the employee or family member would jeopardize the health of others."**

Governor Murphy declared a state of emergency in New Jersey on March 9, 2020. By virtue of his Order, an employee may use Earned Sick Leave under one of the above-listed expanded reasons for use if their absence from work resulted from the state of emergency, because of a closure, or actual or suspected infection. A "Stay at Home" Order was issued by Governor Murphy on March 21, closing non-essential businesses and only permitting individuals to leave their homes for specified reasons.

### Family Leave Act

The New Jersey Family Leave Act ("NJFLA"), which provides unpaid, job-protected leave in the event an employee needs to care for a family member with a serious health condition (among other reasons for use), was also amended. This law applies to employers with 30 or more employees and provides 12 weeks of unpaid, job-protected leave in a 24-month period.

The definition of "serious health condition" was expanded as follows:

> **During a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, "serious health condition" shall also include an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of a family member of the employee due to:**
>
> **(1) The issuance by a health-care provider or the commissioner or other public health authority of a determination that the presence in the community of a family member may jeopardize the health of others; and**
>
> **(2) The recommendation, direction, or order of the provider or authority that the family member be isolated or quarantined because of suspected exposure to the communicable disease.**

It therefore appears that an employee may receive a recommendation from *either* a health-care provider or public-health authority that a family member's presence in the community may pose a risk to others, or due to suspected exposure, and receive job-protected leave.

The amendments also restrict an employer's ability to exercise the highly compensated exception (which ordinarily allows leave to be denied to certain highly compensated individuals to prevent "substantial and grievous economic injury" to the company) where leave is taken:

**(1) Due to a recommendation by a health-care provider or order by a public-health official that a family member who the employee must care for is isolated or quarantined; or**

**(2) Due to "a place of care" (e.g., daycare center) of an employee's family member "being closed because of a state of emergency" or order of a public-health official "during an epidemic of a communicable disease, or a known or suspected exposure to a communicable disease.**

Note the law already provided that, in the event of a layoff or furlough for 90 days or less, the time during which an employee is laid off or furloughed "because of a state of emergency" will continue to count toward the employee's eligibility.

**Family Leave and Temporary Disability Insurance**

New Jersey's Family Leave Insurance ("FLI") and Temporary Disability Insurance ("TDI") programs were also amended by S2304.

The definition of "serious health condition" was similarly expanded as in the NJFLA. Now, employees may receive benefits during a state of emergency, or when indicated by a public- health official, in connection with **"an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of *the employee or family member* of the employee"** as a result of:

**(1) The issuance of a determination by a health-care provider or public-health authority that "the presence in the community of the employee or family member may jeopardize the health of others;" and**

**(2) The recommendation of the provider or authority that the employee or family member "be isolated or quarantined as a result of suspected exposure to a communicable disease.**

The amendments make clear that leave for which benefits may be paid includes **"leave to care for family members suffering from accident or sickness;"** and broadens the definition of "sickness" during a state of emergency, or when necessary as indicated by a public-health authority, to include **"an illness caused by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, which requires in-home care or treatment of the employee or family member of the employee"** due to a determination or recommendation described above.

Notably, the bill eliminates the waiting period before receiving TDI benefits as if for a "sickness" as defined above. (The waiting period for FLI benefits had already been eliminated as a result of 2019 amendments to the law.)

**Reinstatement Rights**

The Legislature in its statement explained S2304 amended the FLA to provide reinstatement rights to individuals who take such leave during an epidemic. By providing expanded leave and reinstatement rights to individuals who may be absent from work due to COVID-19, the state has taken steps to ensure employees may return to work following the crisis.

For a copy of S2304, click on the link provided below.

**https://www.njleg.state.nj.us/2020/Bills/S2500/2304_I1.HTM**

## New York State Enacts Emergency Paid Sick Leave

On March 18, 2020, New York Governor Andrew Cuomo signed into law legislation (S08091) that provides paid leave benefits and job protection to "each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19."

The provisions of the quarantine legislation took effect immediately.

In summary, the legislation provides for the following:

- Employers with 10 or fewer employees and a net income less than $1 million will provide job protection for the duration of the quarantine order and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to $150,000.
- Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than $1 million will provide at least five days of paid sick leave, job protection for the duration of the quarantine order, and guarantee their workers access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to $150,000.
- Employers with 100 or more employees, as well as all public employers (regardless of number of employees), will provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.
- Upon return to work following leave an employee must be restored by his or her employer to the position of employment held by the employee prior to any leave taken with the same pay and other terms and conditions of employment.
- An employee shall not receive paid sick leave benefits or any other paid benefits required due to a mandatory or precautionary order of quarantine, in the case of an employee returning to the United States after traveling (unrelated to employment) to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country, if the employee was provided notice of the travel health notice to such travel. Such employee shall be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave shall be provided for the duration of the any mandatory or precautionary quarantine or isolation.

**Frequently Asked Questions (FAQs):**

Subsequently, on March 25, 2020, New York State released a number of FAQs regarding the newly enacted emergency paid sick leave. A sampling is as follows:

**At what rate of pay does leave need to be paid?**
For the applicable paid leave period (five or 14 days), employers must pay the amount that the worker would have otherwise received had he or she been continuing to work for that period based upon the amount that the employee was scheduled or would have been scheduled had the employer's operations continued in its normal due course. Employees who work a fixed schedule or are paid a salary should simply continue to receive pay for the applicable period. For hourly, part-time, commissions salespeople, and other employees who are not paid a fixed wage, employers should determine the employee's pay by looking at a representative period of time to set the employee's average daily pay rate.

**Is the number of paid days' work or calendar days?**
The number of paid days is calendar days, and the pay required should represent the amount of money that the employee would have otherwise received for the five or 14-day period.

**Is there a waiting period before I will receive my Paid Family Leave/disability benefits quarantine leave benefits?**
No, there is no waiting period for benefits claimed as a result of a mandatory or precautionary quarantine or order of isolation.

**What if I am quarantined because I have recently returned from traveling to another country?**
You are not eligible for quarantine leave if you are subject to a quarantine because you voluntarily traveled to a country with a level two or three health notice from the CDC, if your travel was not at the direction of your employer and you were provided notice of the travel health notice and knew about this restriction in the new law.

**Do I have to apply for COVID-19 quarantine leave?**
You do not have to apply for paid sick days if your employer is required to offer them. If you run out of sick days from your employer, then you would need to apply for Paid Family Leave and disability benefits for compensation during the rest of your quarantine.

For a copy of the FAQs, click on the link provided below.

**https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs**

## New York State 2021 Budget Provides for Permanent Paid Sick Leave

As noted above, New York Governor Andrew Cuomo signed into law legislation (S08091) that provides paid leave benefits and job protection to "each employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19." The provisions of the quarantine legislation took effect upon Governor Cuomo's signature. As part of the Fiscal Year 2021 Budget, New York State has enacted a permanent paid sick provision.

**Permanent Paid Sick Leave**

On April 2, 2020, Governor Cuomo announced that the Fiscal Year 2021 state budget includes a permanent mandatory paid sick leave program. The state legislature passed the budget immediately thereafter, and Governor Cuomo signed the bill on April 3, 2020. The legislation will take effect 180 days after signing, on September 30, 2020.

Some highlights of the permanent paid sick leave program are as follows:

- Employers with fewer than five employees and a net income less than $1 million must provide workers with up to 40 hours of unpaid sick leave a year.
- Employers with five to 99 employees, and those with fewer than five employees and net income of more than $1 million, must provide workers with up to 40 hours paid sick leave annually.
- Employers with 100 or more employees must provide workers with up to 56 hours of paid sick leave per year.
- The paid sick time accrues at a rate of at least one hour per every 30 hours worked.
- The sick leave time is available for use for:
  - Mental or physical illness.
  - Injury or health condition of a family member.
  - Seeking services related to domestic violence, a sexual offense, stalking or human trafficking.

It is important to note that while covered employers must allow employees to begin accruing sick leave time beginning on September 30, 2020, employees need not be permitted to use accrued time until January 1, 2021. However, employers may permit use of leave before that date if they so choose.

## Voting Leave Law Amended Again in New York

Governor Andrew Cuomo of New York on April 1, 2019, announced amendments to the state's 2020 fiscal year budget including an amendment to New York Election Law Section 3-110. The changes took effect immediately upon the Governor signing the budget bill, which he did on April 12, 2019.

Under the FY 2020 amendment, all registered voters were allowed to request up to three hours of time off, regardless of their schedule, without loss of pay to enable the employee to vote in any public election. Employers may designate whether the time off will be taken at the beginning or end of the employee's shift.

**Amended by Fiscal Year 2021 Budget**

The New York Voting Leave law was again amended in the Fiscal Year 2021 Budget to stipulate that only workers who do not have four hours before or after work to vote may request up to three hours of paid time to vote. The law becomes effect September 30, 2020.

It is important to note that, in order to be entitled to voting time off, employees must be registered to vote and must provide at least two days' advance notice of the need for time off to vote. The amendment is silent on whether an employer can require proof of voting after the employee takes paid time off, or whether the employer may charge time off taken by an employee to vote against the employee's general paid time off bank provided by the employer's paid time off policies.

Employers must conspicuously post in the place of work, where it can be seen by employees, a notice setting forth the voting time off entitlement, at least 10 days before a public election remains intact. Such notice must remain posted until the polls close.

As before, employers may designate whether the time off will be taken at the beginning or end of the employee's shift.

## Oregon Expands OFLA Due to COVID-19

Under a temporary administrative order, effective March 18, 2020, Oregon employees may be absent for up to 12 weeks, on a continuous or intermittent basis, because their child's school or place of care has been closed by public authorities, including out of concerns related to the coronavirus (COVID-19) outbreak.

Previously, Oregon employers were required to allow employees up to 40 hours of sick leave for this reason under the Oregon paid sick leave law. The temporary administrative order expands employee rights under the Oregon Family Leave Act (OFLA) and means lengthier absences are protected.

Additionally, the OFLA's reinstatement obligations, which generally exceed the requirements of federal law, apply to employees who take leave as a result of the closure of the employee's child's school.

Further, because employees are entitled to use any accrued leave, over and above any Oregon Sick Leave allotment, during an OFLA-covered absence, employees will have the option of exhausting their paid time off (PTO) and vacation banks during a period of leave. This new rule will remain in place through September 13, 2020, if not extended.

For more information on the OFLA and the temporary administrative order, click on the link provided below.

**https://www.oregon.gov/boli/TA/pages/t_faq_oregon_family_leave_act_01-2011.aspx**

## Puerto Rico Enacts Law Creating Special Paid Leave for Nonexempt Employees in the Private Sector

Puerto Rico Governor Hon. Wanda Vázquez-Garced, responding to the COVID-19 pandemic, has signed into law legislation which amends the Puerto Rico Minimum Salary, Vacation and Sick Leave Act (the "Sick Leave Act").

The legislation, specifically House Bill Number 2428, now Act Number 37-2020, establishes a special paid leave for nonexempt employees in the private sector infected (or are suspected of being infected) by the illness or epidemic that triggers a state of emergency declared by either the Governor of Puerto Rico or the Secretary of the Puerto Rico Health Department.

Act Number 37-2020 amends the Sick Leave Act to add a subsection (p) to provide an employee infected or suspected of being infected with the disease or illness that caused the state of emergency the right to a special paid leave of five working days. Importantly, to use the special paid leave, the employee must first exhaust all available accrued sick leave, as well as any other available accrued leave to which the employee is entitled. Employees cannot use this special paid leave for any other reason than those specifically established by the newly added subsection (p).

The amendment also provided that an employee's use of the special leave cannot be used as a measure of the employee's efficiency when determining pay raises or promotions. Likewise, those absences cannot be used to justify disciplinary actions, such as suspensions or termination.

The amendments to the Sick Leave Act were effective upon the signature of the Governor on April 9, 2020.

# City Leave

## City of Los Angeles, California, Supplemental COVID-19 Paid Sick Leave Ordinance Modified by Mayor

On April 7, 2020, City of Los Angeles Mayor Eric Garcetti signed Ordinance 186590 adding Article 5-72HH to Chapter XX (Chapter 20) of the Los Angeles Municipal Code to provide supplemental sick leave to workers affected by COVID-19. The Ordinance became effective April 10, 2020.

The Mayor issued a Public Order on the same day to also be effective April 10, 2020 that supersedes Ordinance 186590.

A summary of the Public Order is as follows:

- Employers with 500 or more employees within the City of Los Angeles, or (2) 2,000 or more employees within the United States must offer 80 hours of Supplemental Paid Sick Leave to employees who perform work within the geographic boundaries of the City of Los Angeles for various COVID-19 related reasons.
- An employer shall provide Supplemental Paid Sick Leave upon the oral or written request of an employee if:
  - The employee takes time off because a public health official or health-care provider requires or recommends the employee isolate or self-quarantine to prevent the spread of COVID-19;
  - The employee takes time off work because the employee is at least 65 years old or has a health condition such as heart disease, asthma, lung disease, diabetes, kidney disease, or a weakened immune system;
  - The employee takes time off from work because the employee needs to care for a family member who is not sick but who public health officials or health-care providers have required or recommended isolation or self-quarantine;
  - The employee takes time off work because the employee needs to provide care for a family member whose senior care provider or whose school or child care provider caring for a child under the age of 18 temporarily ceases operations in response to a public health or other public official's recommendation.
- An employer may not require a doctor's note or other documentation for the use of Supplemental Paid Sick Leave.
- The following entities are exempt from the Public Order:
  - Employers of emergency personnel as defined by the City's prior Shelter-In-Place Order or health-care workers as defined under the Government Code.
  - Employers that provide global parcel delivery services, which has been deemed an essential emergency service.
  - Businesses that opened in the City and businesses that relocated to the City during the period September 4, 2019, through March 4, 2020. To qualify for the exemption, the business could not have been a business within the City of Los Angeles in the 2018 tax year. However, this exemption does not apply to construction businesses or film producers.
  - Government agencies working within the course and scope of their public-service employment.
  - Any business or organization that was closed or not operating for a period of 14 or more days due to a city official's emergency order because of the COVID-19 pandemic or provided at least 14 days of leave.
  - A collective bargaining agreement in place on the effective date of the Public Order may supersede the provisions of this Order, if it contains COVID-19 related sick leave provisions.
  - If an employer has a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually, the employer is exempt from any obligation to provide supplemental leave pursuant to this Order for the employee that received the more generous paid leave.
- The Public Order caps the total amount to be paid at $511 per day and $5,110 in the aggregate.
- An employer's obligation to provide the 80 hours of Supplemental Paid Sick Leave under the Public Order is reduced for every hour an employer allowed an employee to take paid leave in an amount equal or greater than the requirements outlined in the Public Order, not including previously accrued hours.

For a copy of the Public Order and Ordinance, click on the links provided below:

**Public Order:**

https://www.lamayor.org/sites/g/files/wph446/f/page/file/SUPPLEMENTALPAIDSICKLEAVE.pdf

**Ordinance:**

http://clkrep.lacity.org/onlinedocs/2020/20-0147-S39_ORD_186590_04-10-2020.pdf

## Dallas, Texas, Paid Sick Leave Law Enforcement Blocked

The Dallas, Texas, City Council passed an ordinance requiring employers to provide paid sick leave to its employees. The ordinance took effect on August 1, 2019, for all covered employers with six or more employees. The effective date is delayed until August 1, 2021, for employers that had fewer than six employees at any time in the preceding 12-month period.

Under the ordinance, employees earn one hour of sick time for every 30 hours worked, but there are caps on accrual depending on the employer's size. An employer that has had 16 or more employees at any time in the preceding 12-month period must provide at least 64 hours of paid sick leave per year, whereas an employer with fewer than 16 employees must provide at least 48 hours of paid sick leave per year.

Employers may not retaliate against employees for exercising their rights under the ordinance. An employer may not transfer, demote, discharge, suspend, reduce hours, or directly threaten these actions against an employee for requesting or using earned sick time, reporting a violation of the ordinance, or participating in an investigation or proceeding related to the ordinance.

The Ordinance went into effect on August 1, 2019, for employers with at least six employees, but the city delayed enforcement, except for violations of the anti-retaliation provision, until April 1, 2020.

**Court Challenge**

On July 30, 2019, the Texas Public Policy Foundation filed suit and a "Motion for Preliminary Injunction" in federal court to halt the implementation of the Dallas paid sick leave ordinance on August 1, 2019 arguing that the ordinance is not constitutional as it violates the Texas Minimum Wage Act.

On March 30, 2020, two days before penalties were to be enforced, a federal judge issued an injunction stopping the city from enforcing the ordinance that requires private employers to offer paid sick leave.

In granting the temporary injunction, Judge Jordan held that the plaintiffs established a substantial likelihood of success on their claim that the Ordinance is preempted by the Texas Minimum Wage Act and, therefore, unenforceable under the Texas Constitution.

Judge Jordan acknowledged that the decision "issues at a time when the American public and federal, state, and local authorities are confronted with the unprecedented public health crisis and economic upheaval caused by Coronavirus Disease 2019 ('COVID-19')." But, he concluded, under Texas law, the public policy issue of whether the government should impose paid sick leave requirements on private employers is a decision for the Texas legislature.

The court's decision follows similar rulings issued in Texas state-court lawsuits challenging the paid sick leave ordinances enacted in the cities of Austin and San Antonio, both of which remain enjoined and are not currently being enforced by the cities. Paid sick leave is now on hold everywhere in Texas.

## Employers May Not Require Doctor's Note for San Francisco, California, Paid Sick Leave Taken for COVID-19

On March 9, 2020, the San Francisco Office of Labor Standards Enforcement (OLSE) issued guidance regarding the use of San Francisco paid sick leave for situations involving the recent coronavirus outbreak.

By way of background, the San Francisco Paid Sick Leave Ordinance (PSLO) requires employers to provide paid sick leave to all employees (including temporary and part-time employees) who perform work in San Francisco. Employees earn one hour of paid sick leave for every 30 hours worked. Employers with 10 or more employees may cap an employee's sick time balance at 72 hours. Employers with fewer than 10 employees may cap an employee's sick time balance at 40 hours.

In its coronavirus outbreak guidance, San Francisco stated that employers covered by the City's paid sick leave ordinance must allow covered employees to use accrued sick leave in situations that include taking time off from work because:

(1) Public health officials or health-care providers require or recommend an employee isolate or quarantine to prevent the spread of disease;
(2) The employee falls within the definition of "vulnerable population" (a person at least 60 years old or who has a health condition);
(3) The business or work location temporarily ceases operations in response to a public health or other public official's recommendation;
(4) The employee needs to care for a family member who is not sick but public health officials require or recommend isolation or quarantine; or
(5) The employee needs to provide care for a family member whose school, child-care provider, senior-care provider, or work temporarily ceases operations in response to a public health or other public official's recommendation.

**Updated Guidance:**

On March 24, 2020, San Francisco announced that employers are not permitted to require a doctor's note or other documentation for the use of paid sick leave taken during the Local Health Emergency due to COVID-19. The current rule (OLSE Paid Sick Leave Ordinance Rule 2.3) that permits employers to require a doctor's note or other documentation from an employee for paid sick leave of three consecutive days is suspended temporarily for the duration of the Local Health Emergency.

The announcement stated as follows:

**Employer Verification of Paid Sick Leave**

OLSE Paid Sick Leave Ordinance (PSLO) Rule 2.3 states:

Policies or practices that require a doctor's note or other documentation for the use of paid sick leave of three or fewer consecutive work days shall be deemed unreasonable. Policies or practices that require a doctor's note or other documentation for the use of paid sick leave of more than three consecutive work days (whether full or partial days) shall be deemed reasonable.

Effective immediately, OLSE Rule 2.3 is suspended and replaced with the following:

Employers may not require a doctor's note or other documentation for the use of paid sick leave taken pursuant to the Paid Sick Leave Ordinance during the duration of the Local Health Emergency regarding Novel Coronavirus Disease 2019.

This Rule suspension is temporary, effective only for the duration of the above-referenced Local Health Emergency. Rule 2.3 will revert automatically to the version in effect prior to this guidance upon expiration of the Local Health Emergency, unless OLSE revokes it sooner.

Click on the following link to access the "San Francisco Paid Sick Leave & The Coronavirus" website:

**https://sfgov.org/olse/san-francisco-paid-sick-leave-coronavirus**

## Minneapolis, Minnesota, Updates FAQs on Paid Sick Leave and COVID-19

It was previously reported that on March 18, 2020, the city of Minneapolis issued a frequently asked questions guide (FAQs) regarding the application of Minneapolis' Sick and Safe Time Ordinance to absences related to COVID-19. The FAQs clarified that an employee may use **accrued** sick and safe leave for absences related to:

1. Coronavirus screening;
2. Care or quarantine due to COVID-19 symptoms or infection;
3. Testing or quarantine following close personal contact with a coronavirus infected or symptomatic person;
4. Covered family member's school or place-of-care closure due to coronavirus; and
5. Workplace closures by order of a public official due to coronavirus.

The FAQs also clarify that "preemptive closures" (i.e., absent an order by a public official) and "preemptive self-quarantines" (i.e., without reason to believe the employee has contracted the illness) are **not** covered uses under the ordinance. Finally, the FAQs also clarify that employees may only use sick and safe time to cover **scheduled** shifts or the shifts the employee would have expected to work had their work not been ordered closed by a public official.

**Updated FAQs**

The guidance has now been updated to include three new FAQs as shown below:

**If an employer's operation has been ordered closed by a public official, can it still have employees?**
Yes, an employer that has been ordered to temporarily close due to coronavirus may still have employees. Workers who are only temporarily unable to work may still be employees. However, if a worker has been laid off or furloughed, the worker is no longer employed by the business (within the meaning of the ordinance) and is not entitled to use sick and safe time during the layoff or furlough. An employer may choose to allow the use of sick and safe time for laid off or furloughed workers, but it is not required to do so.

**Are employers required to pay out unused sick and safe time at the end of an employment relationship?**
No. Nothing in the Sick and Safe Time Ordinance requires employers to pay out unused sick and safe time hours at the time the employment relationship is terminated. However, employers may choose to do so.

**How does the federal Families First Coronavirus Response Act affect Sick and Safe Time requirements?**
Federal law entitles certain employees to additional leave. For details, consult information published by the United States Department of Labor.

In addition, it is important to note that some of the previous FAQs have been updated.

For a copy of the updated FAQs, click on the link provided below:

http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/covid-19_and_sst_final_3.30.20.pdf

## New York City Provides Guidance on Paid Safe and Sick Leave Law and COVID-19

The New York City Department of Consumer Affairs (the DCA, which is the agency that enforces and regulates the New York City Earned Sick and Safe Time Act) issued updated guidance on the use of sick leave under New York City law. The DCA specifically stated that employees can use New York City Paid Sick Leave for any of the following COVID-19-related purposes:

**Background:**

Under New York City's Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law), covered employees have the right to use safe and sick leave for the care and treatment of themselves or a family member and to seek legal and social services assistance or take other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking.

The amount of Safe and Sick Leave and the rate of pay to be provided is shown below:

| Number of Employees Employed by Employer | Amount of Safe and Sick Leave per Calendar Year | Rate of Pay for Leave |
|---|---|---|
| 5 or more | Up to 40 hours paid leave | Up to 40 hours unpaid leave |
| 1-4 | Up to 40 hours unpaid leave | Unpaid |

**DCA Guidance:**

The DCA specifically stated that employees can use New York City Paid Sick Leave for any of the following COVID-19-related purposes:

- Employee feels ill or shows symptoms of COVID-19;
- Employee gets tested for the flu or COVID-19;
- Employee is under quarantine or self-isolating for preventative purposes;
- Employee is caring for a family member under a mandatory or precautionary order of quarantine;
- When a public official closes the business temporarily due to a public health emergency; or
- When a public official closes their child's school or child-care provider due to a public health emergency.

It is important to note that unlike the New York State Law, the New York City law does not require a Quarantine Order. For example, a physician-ordered quarantine would entitle an employee to paid sick leave under the New York City law. As noted above, if an employee is eligible to use both New York City and New York State paid sick leave, these two leave entitlements cannot run concurrently.

Additionally, with respect to enforcement of applicable law, the updated guidance states that the Department of Consumer and Worker Protection will:

- Continue to enforce New York City workplace laws;
- Prioritize complaints from workers who report immediate impacts on their ability to earn income, such as last-minute schedule reductions or failure to pay for sick leave; and
- Prioritize swift resolutions that make workers whole, taking into account the good faith, responsiveness, and legitimate business considerations of employers.

For a copy of the DCA's updated guidance, click on the link provided below.

https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Complying-with-NYC-Workplace-Laws-During-COVID-19.pdf

## San Jose, California, Approves Emergency Paid Sick Leave Policy

On April 7, 2020, San Jose, California, officials unanimously approved an emergency paid sick leave policy that guarantees any essential employee in the city will be paid if they are affected by the growing coronavirus crisis and unable to work.

The ordinance is aimed at filling gaps created by the enactment of the Families First Coronavirus Response Act of March 18, 2020, that does not cover employees in private-sector companies with more than 500 people and provides potential exemptions for businesses with fewer than 50 employees.

It is important to note that businesses that already provide employees with at least 160 hours of paid time off and vacation are exempt from the ordinance.

Highlights of the ordinance are as follows:

- Businesses that remain in operation during the county and state's stay-at-home mandates are required to provide employees affected by coronavirus with an immediate 40 hours of sick leave plus an additional hour for every two hours worked, up to a cap of 80 hours of sick leave.
- The ordinance will remain in effect until the city lifts the emergency declaration put in place for the current coronavirus pandemic.
- The ordinance exceeds state law, which requires businesses to provide 24 hours of paid sick leave to employees, and goes further than permanent ordinances in other California cities, which at most provide 72 hours.
- The ordinance takes effect immediately for the majority of employers in the city. After hearing some concerns from a Kaiser representative about some issues with implementing the ordinance, the city added a two-week implementation period for employers that operate hospitals.
- In order to qualify for the emergency sick leave protections, an employee must be experiencing symptoms related to COVID-19 or be under a quarantine or isolation order, caring for an individual with a suspected or confirmed case of coronavirus, or watching a child whose school has been closed while the stay-at-home order is in place.

## Seattle, Washington, Amends Paid Sick and Safe Time Ordinance Due to Coronavirus

On March 16, 2020, the Seattle City Government amended its Paid Sick and Safe Time Ordinance (PSST) to allow for eligible employees working in the city to use PSST when their family member's school or place of care is closed, regardless of whether such closure is made by a public official. This allows for parents or guardians of children, who are enrolled in private schools or daycare facilities, to take PSST when those institutions are closed for health reasons. The amendments to the PSST became effective on March 18, 2020.

In an announcement advising of the amendment, the City of Seattle stated in part as follows:

> Prior to the March 2020 amendments, employees could use PSST when their child's place of care or school was closed due to the order of a public health official for a health-related reason. Now an employee may use PSST if any family member's place of care or school is closed. Also, the law no longer requires that the closure be for a health-related reason or that a public official order the closure. These amendments also now require an employer with 250 or more full-time equivalent employees to allow their employees to take PSST when their place of business has been closed for any health or safety reason.

For a copy of the amendment, click on the link provided below.

**https://www.seattle.gov/laborstandards/ordinances/paid-sick-and-safe-time**

## Seattle, Washington, Employers Prohibited from Requiring Doctor's Note for Use of Sick Time

Subsequently the Seattle Office of Labor Standards (OLS) temporarily modified the PSST to clarify that employers may not require a doctor's note or healthcare provider verification for use of paid sick time during the COVID-19 Civil Emergency. The OLS states that is "an unreasonable burden for employers to require verification from a health-care provider. Employers must identify and provide alternatives for the employee to meet the employer's verification requirement in a manner which does not result in an unreasonable burden or expense on the employee."

Alternate documentation could include (but is not limited to):

- The employee's own statement, or
- Documentation from other individuals like service providers, social workers, case managers, or legal advocates, stating that, to their knowledge, the employee's use of paid sick leave is for a covered purpose.

Employees are not prevented from voluntarily using healthcare provider verification, including a doctor's note obtained through telemedicine, if it is available to them. OLS notes that employers do not have to request verification and strongly encourages employers to be flexible as possible given the COVID-19 Civil Emergency.

The temporary, emergency rule is effective for 60 days (through June 7, 2020). After 60 days, the rules will automatically revert to the version in effect prior to the emergency rule, unless it is revoked sooner or extended through a formal rulemaking process.

That version of the PSST Ordinance allows, but does not require, employers to request verification for the use of PSST after an employee's third consecutive workday of use. In all instances, verification cannot pose an unreasonable burden or expense to the employee.

For a copy of the Emergency Temporary Rule and further inform on the Seattle PSST, click on the link provided below.

**http://www.seattle.gov/laborstandards/ordinances/paid-sick-and-safe-time?utm_medium=email&utm_source=govdelivery**

## State Payroll

### Indiana DOR Provides Guidance on Teleworking Due to COVID-19

The Indiana Department of Revenue (DOR) has updated its COVID-19 frequently asked questions (FAQs) to clarify that, due to new remote work requirements in response to the COVID-19 emergency, the DOR will not use an employee's relocation, that is the direct result of temporary remote work (teleworking or telecommuting) requirements, as the basis for establishing Indiana nexus.

The updated FAQ states as follows:

**If my employees are working from home during the COVID-19 crisis, does that modify my company's nexus determination?**

In response to the new remote work requirements associated with the COVID-19 pandemic, the Indiana Department of Revenue will not use someone's relocation, that is the direct result of temporary remote work requirements arising from and during the COVID-19 pandemic health crisis, as the basis for establishing Indiana nexus or for exceeding the protections provided by P.L. 86-272 for the employer of the temporarily relocated employee.

The temporary protections provided under this guidance will extend for periods of time where:

1. There is an official work-from-home order issued by an applicable federal, state or local government unit, or
2. Pursuant to the order of a physician in relation to the COVID-19 outbreak or due to an actual diagnosis of COVID-19, plus 14 days to allow for return to normal work locations.

If the person remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer. Likewise, an employer may not assert that solely having a temporarily relocated employee in Indiana under the circumstances described above creates nexus for the business or exceeds the protections of P.L. 86-272 for the employer.

For a copy of the Indiana COVID-19 FAQs, click on the link provided below.

**https://www.in.gov/dor/7078.htm**

### Mississippi Provides Guidance on Tax Withholding on Employees Temporarily Working From Home

Mississippi has announced that withholding requirements remain unchanged based on an employee's temporary telework location, and the Department of Revenue will not use any changes in the employees' temporary work location to impose nexus or alter any income apportionment while those temporary telework requirements are in place during the COVID-19 pandemic.

The announcement in part stated as follows:

During the period of national emergency, Mississippi will not change withholding requirements for businesses based on the employee's temporary telework location. Mississippi residents are taxable on their total income, regardless of where they work. However, we will not impose any new withholding requirements on the employer. Mississippi will not use any changes in the employees' temporary work locations due to the pandemic to impose nexus or alter apportionment of income for any business while temporary telework requirements are in place.

Click on the following link to access the announcement.

**https://www.dor.ms.gov/Documents/COVID%20Extensions%20Press%20Release.pdf**

## New Jersey Provides Guidance on Telecommuting Due to Coronavirus

The New Jersey Division of Taxation (DOT) has issued a set of frequently asked questions (FAQs) for employers and employees regarding income sourcing for those telecommuting as a result of coronavirus (COVID-19) concerns. New Jersey rules specify that income is sourced based on where the service or employment is performed, based on a day's method of allocation. The FAQs explain that, during the temporary period of the COVID-19 pandemic, wage income will continue to be sourced as determined by the employer in accordance with the employer's jurisdiction. Individual employees may reconcile their 2020 nonresident income allocation on their 2020 state individual income tax returns if employers maintain their existing work state data in their payroll systems. The DOT does not intend to change its audit program at this time. The DOT's current audit program already includes the review of sourcing of income. If the employee is under-withheld, the DOT is unable to waive interest as it is mandated by N.J. Rev. Stat. § 54A:9-5. Relief from applicable penalties may be granted on a case-by-case basis if circumstances warrant.

A sampling of the FAQs are as follows:

**Would the Division advise employers in your state to not change the current work state set-up for employees in their payroll systems who are now telecommuting or are temporarily relocated at an out-of-state employer location?**
The Division would not require employers to make that change for this temporary situation. However, employers must consider their unique circumstances and make that decision.

**If the answer to the above is yes, will the Division waive under-withheld tax, penalties, and/or interest for employers for this period if examined by the Division at a later date?**
Relief may be granted on a case by case basis if circumstances warrant.

**Will the Division permit extensions for the filing of employment tax returns and deposits or relief from interest and penalties (like the California Employment Development Division did in its guidance issued on March 9, 2020)?**
There is currently no extension of time granted for withholding tax payments.

The Division is not aware of any extensions granted for employment tax returns at this time. However, the Department of Labor administers this program.

**Will the Division permit the individual employees to reconcile their 2020 nonresident income allocation on their 2020 state individual income tax returns if employers maintain their existing work state data in their payroll systems?**
Taxpayers may use a different allocation if warranted. The Division may request supporting documentation for the allocation.

**If the answer to the above is yes, will the Division waive applicable penalties and/or interest for individual taxpayers for this period upon the filing of their 2020 tax returns and/or if examined at a later date?**
The Division is unable to waive interest as it is mandated by N.J.S.A. 54A:9-5. Relief from applicable penalties may be granted on a case by case basis if circumstances warrant.

For a copy of all the FAQs, click on the link provided below.

**https://www.state.nj.us/treasury/taxation/covid19-payroll.shtml**

## Ohio Releases Tax Guidance on Employees Temporarily Working From Home

On March 27, 2020, as a result of the COVID-19 crisis, the Governor of Ohio signed House Bill 197. This temporary change indicates that, for municipal income tax purposes, *an employee working from home or from a temporary worksite during the emergency is to* be considered as working from their otherwise principal place of work for purposes of the "20-day rule."

> House Bill 197 states in part as follows:
>
> SECTION 29. Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee's home, to which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee's principal place of work.

See pages 340 -341 of the bill for additional information.

**https://legiscan.com/OH/text/HB197/2019**

## Oregon Releases COVID-19 Child Support Guidance

On April 9, 2020, the Oregon Department of Justice Child Support Program has released COVID-19 (coronavirus) Child Support frequently asked questions (FAQs).

Importantly, the FAQs note that if an employee is not working sufficient hours to qualify for health insurance, the employer is not required to continue providing insurance pursuant to a National Medical Support Notice. If the children are unenrolled, employers should notify the Child Support Program so the case can be updated. Another FAQ notes that an employer that has temporarily ceased operations due to COVID-19 will not be sanctioned for failing to respond to a request for child support information, but the employer is required to respond as soon as possible. If an employee is working reduced hours due to COVID-19 and the employee's paycheck is reduced, the employer should withhold the full amount of child support based on the pay period frequency, subject to the withholding limits provided on the income withholding order.

A sampling of other FAQs are as follows:

**I'm the parent who pays support. If I'm laid off due to COVID-19, what happens to my child support obligation?**
A court order for child support continues until it is modified or terminated. That means your child support is still due.

Depending on the length of the lay-off, a modification may be appropriate. Contact us to discuss your circumstances.

If you receive unemployment compensation, your child support may be withheld from the benefits.

We are evaluating what actions we can take to help families affected by COVID-19, as is the federal child support program. We will post any child support-related information at OregonChildSupport.gov.

**If my employer temporarily closes, will they still send in my child support payment?**
Your employer is responsible for withholding child support from any earnings you receive and sending those withheld payments to the Oregon Child Support Program. If you are experiencing unpaid time off, we recommend you make other arrangements to pay your support obligation.

**My employees are working reduced hours. How do I withhold child support if their paycheck is reduced?**
Withhold the full amount based on the pay period frequency, subject to the withholding limits explained in the income withholding order.

For a copy of all the FAQs, click on the link provided below.

**https://www.doj.state.or.us/child-support/resources-for-applicants/covid-19/**

# City Payroll

## Emeryville, California, Minimum Wage to Increase

The City of Emeryville, California, has announced that its minimum wage rate will increase to $16.84 per hour effective July 1, 2020.

The current minimum wage is $16.30 per hour.

The use of a tip credit is not allowed when paying tipped employees.

For a copy of the announcement, click on the link provided below.

**https://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance**

## Hayward, California, Delays Increase to Minimum Wage

On February 4, 2020, the Hayward City Council voted unanimously to increase the minimum wage rate for employees working within the city.

As a result of the COVID-19 pandemic, the Council on April 14, 2020 voted to delay the increase. The revised ordinance is shown below with the amendments.

Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the city:

**Small Employers (25 or less employees):**

> Beginning on ~~July 1, 2020~~, January 1, 2021, the minimum wage shall be an hourly rate of $14.00 for small businesses. To prevent inflation from eroding its value, on ~~July 1, 2021 and July 1, 2022~~, January 1, 2022, the minimum wage shall increase by an amount corresponding to the Consumer Price Index (CPI), if any, to account for the increase in the cost of living but such increases shall not exceed a total of $15.00 per hour. Beginning on January 1, 2023, the minimum wage shall be $15.00 in accordance with current State of California minimum wage law. Beginning on January 1, 2024, and every January 1st thereafter, the minimum wage shall increase by an amount corresponding to the CPI in accordance with State law.

**Large Employers (26 or more employees):**

> Beginning on ~~July 1, 2020~~, January 1, 2021, the minimum wage shall be an hourly rate of $15.00 for large businesses. To prevent inflation from eroding its value, beginning on ~~July 1, 2021~~, January 1, 2022, and each July 1st thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed five percent.

For a copy of the amended ordinance, click on the link provided below.

**https://library.municode.com/ca/hayward/ordinances/municipal_code?nodeId=1015828**

## Nonresident Employees Exempt From City Income Tax While Teleworking in Michigan

The Michigan Department of Treasury (DOT) has confirmed via frequently asked questions (FAQs) that employees currently required to telecommute from a location outside of the city of their employment are not required to pay city income tax as nonresidents.

The FAQs also stipulated the following:

- Nonresident city income tax return includes a schedule by which employees can allocate wages between taxable city income and nontaxable city income based on either days or hours worked.
- Employers are responsible for providing employees with a letter stating the dates that employees were directed to work from home.
- Employees, though not required to submit a log of hours and an employer letter with their tax return, should retain a copy of both documents for their records.

For a copy of the FAQs, click on the link provided below.

**https://www.michigan.gov/taxes/0,4676,7-238-73294-522100--,00.html**

## Philadelphia Issues Wage Tax Policy Guidance for Nonresident Employees

On March 26, 2020, the City of Philadelphia's Department of Revenue issued the following guidance on their Wage Tax policy for nonresident employees:

Nonresident employees based in Philadelphia are not subject to Philadelphia Wage Tax during the time they have been ordered to work outside of Philadelphia.

The Philadelphia Department of Revenue has not changed their Wage Tax policy. Schedules to withhold and remit the tax to the City remain the same. This guidance is published at a time when employees have been forced to perform their duties from home, many for the first time.

The Wage Tax policy is as follows:

The City of Philadelphia uses a "requirement of employment" standard that applies to all nonresidents whose base of operation is the employer's location within Philadelphia. Under this standard, a nonresident employee is not subject to the Wage Tax when the employer requires him or her to perform a job outside of Philadelphia (i.e., their home).

A nonresident who works from home for the sake of convenience is not exempt from the Wage Tax – even with his or her employer's authorization. On the other hand, if a Philadelphia employer requires a nonresident to perform duties outside the city, he or she is exempt from the Wage Tax for the days spent fulfilling that work.

Nonresident employees, who mistakenly had Wage Tax withheld during the time they were required to perform their duties from home in 2020, will have the opportunity to file for a refund with a Wage Tax Reconciliation Form in 2021.

The City requires an employer to withhold and remit Wage Tax for all its Philadelphia residents, regardless of where they perform their duties

Click on the link below for the City of Philadelphia tax guidance in response to COVID-19.

**https://www.phila.gov/documents/coronavirus-tax-guidance/**

# Time and Labor

## Philadelphia, Pennsylvania, Postpones Enforcement of Predictive Scheduling Law During COVID-19 Emergency

On December 8, 2018, the City Council of Philadelphia passed a "Fair Workweek" bill, which was signed into law on December 20th by Philadelphia Mayor Jim Kenney. The law applies to employers in the retail, fast-food, and hotel industries with more than 30 locations and 250 employees. It will require covered employers to:

- Provide employees with a written, good-faith estimate of the employee's schedule when hired
- Engage in an interactive process regarding the employee's availability
- Give employees two weeks' advance notice of their schedules
- Provide "predictability pay" if schedules change within ten days of the schedule being delivered (and increasing to 14 days beginning January 1, 2021) unless an employee consents to the change
  - If hours are added to an employee's schedule, or the schedule is changed with no loss in hours to the employee, the employer must pay one hour of predictability pay.
  - If hours are reduced, the employer must pay predictability pay at a rate of time and a half for all hours not worked as a result of the change.
  - Some exceptions for extenuating circumstances, such as natural disasters, apply
- Offer available shifts to existing employees before hiring new ones
- Provide employees with at least a nine-hour break between shifts
- Maintain records of their compliance with the law.
- Any part of the ordinance may be waived in a bona fide collective bargaining agreement.

**Delayed Effective Date:**

The "Fair Workweek" law was originally scheduled to take effect on January 1, 2020. However, the Mayor's Office of Labor had announced that the effective date of the law was postponed until April 1, 2020.

**Postponement of Enforcement Due to COVID-19**

Philadelphia has now released guidance stating that the Office of Benefits and Wage Compliance will not be enforcing predictability pay as of the April 1, 2020, effective date of the Fair Workweek law until further notice. However, other provisions of the law will be enforced.

The guidance stated in part as follows:

> In response to the COVID-19 health emergency, the Office of Benefits and Wage Compliance will not be enforcing predictability pay as of the April 1, 2020, effect date of the Fair Workweek law until further notice. However, employers are still expected to comply with other portions of the law. The City, through the Office of Benefits and Wage Compliance, will continue to work with businesses on compliance during this difficult and constantly-evolving situation.

For a copy of the announcement, click on the following link:

https://www.phila.gov/2020-03-19-understanding-predictability-pay-under-fair-workweek/

## Seattle, Washington, Provides Guidance Regarding Secure Scheduling Ordinance Requirements During COVID-19

The Seattle Office of Labor Standards has released frequently asked questions (FAQs) regarding the Secure Scheduling Ordinance and Coronavirus (COVID-19). Under the ordinance, large food services and retail establishments with 500 or more employees worldwide, and full-service restaurants with 500 or more employees in 40 or more locations worldwide, are required to provide secure scheduling to hourly, non-exempt employees who work at least 50 percent of the time within Seattle. Employers are required to give employees their work schedule at least 14 days in advance or additional compensation must be paid to the worker.

The FAQs note that additional compensation may not be required under the "operations cannot begin or continue" exception if the employer cannot open or must close the worksite early under certain conditions including under the recommendation of a public official. The FAQs also note that if a business does not begin or closes operations due to fears for employees' safety, the exception for threats to employees or property would apply. For example, if a business learns two hours before closing that an employee has tested positive for COVID-19, and it decides to close and send all employees home early to ensure their safety, this exception will apply.

A sampling of the FAQs are as follows:

**Must an employer pay premium pay to its employees if it cancels shifts for reasons related to COVID-19?**
It depends. In general, if an employer changes an employee's schedule with less than 14 days before the start of the shift, the employer must pay each worker additional compensation unless an exception applies. In the case of COVID-19, the exception for "operations cannot begin or continue" may apply.

**When does the "operations cannot begin or continue" exception apply?**
An employer is not required to pay additional compensation for a schedule change where the employer cannot open or must close the worksite early due to any of the following reasons: i. Threats to employees or property; ii. The recommendation of a public official; iii. Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; iv. Natural disaster; v. Weather events; or vi. Events that would cause the employer to violate a legal requirement.

For a copy of all the FAQs, click on the link below.

**http://www.seattle.gov/Documents/Departments/LaborStandards/SSO_QA_COVIDEdition_2020_31320FINAL.pdf**

Click on the link below for more information regarding the Seattle Secure Scheduling Ordinance

**https://www.seattle.gov/laborstandards/ordinances/secure-scheduling**

# ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at **www.adp.com/regulatorynews**.



If you have any questions regarding our services, please call 855-466-0790.

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