

# Labor & Employment Law Alert: NYS Issues Guidance Expanding Employer Obligations For Paid COVID-19 Sick Leave

As many of you may recall, on March 18, 2020, New York State enacted legislation authorizing sick leave for employees “subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.” (“NYS COVID-19 sick leave”). All employers, depending on their size, were required to provide some form of paid and/or unpaid sick leave to employees subject to a quarantine order who could not report to work and/or work remotely. The maximum paid leave for employers with 100 or more employees, was 14 days. Employees were also entitled to job protection upon return from such leave. (Note that an exception was implemented for employees who found themselves subject to a quarantine order due to personal travel to another state on the then-existing restricted list.)

On June 25, 2020, [New York State provided further guidance on this law and authorized expanded benefits specifically for “health care employees.”](#) In short, the guidance explained that health care employees had the ability to access NYS COVID-19 sick leave and the correlating job protection for up to two additional occurrences, provided the second and third quarantine orders were due to the employee receiving a positive COVID-19 test that required further isolation. This enhanced benefit was clearly limited to “health care employees.”

On January 20, 2021, New York State issued further “guidance” expanding these enhanced benefits to non-health care employees. [The guidance](#) indicates that **any** employees, not only health care employees, are eligible for this benefit up to three times. The guidance further provides that “if an employer mandates that an employee who is not otherwise subject to a mandatory or precautionary order of quarantine or isolation [is] to remain out of work due to exposure or potential exposure to COVID-19, regardless of whether such exposure or potential exposure was in the workplace, *the employer shall continue to pay the employee at the employee’s regular rate of pay until such time as the employer permits the employee to return to work* or the employee becomes subject to a mandatory or precautionary order of quarantine or isolation.” (emphasis supplied.) This guidance, which comes without further explanation, is likely to conflict with some employers’ existing practice.

While there may be a legal argument that the new guidance, which was not the product of rulemaking, is inconsistent with the statutory language, it is too soon to tell how that argument will be received and/or what response we might expect from the Labor Department in terms of enforcement. In the interim, employers should assume that the Labor Department will expect employers to adhere to this guidance.

Please feel to contact any of us at Hancock Estabrook if you have concerns regarding how your existing policies may be impacted by this new guidance.

