

Client Alert

April 2020

COVID-19 – Update on Federal and State Leave Laws

On March 18, the Families First Coronavirus Response Act (“FFCRA”) was signed into law as described in our earlier [update](#). Since then, the U.S. Department of Labor has provided significant guidance to employers and practitioners, most notably by giving answers to 59 [frequently asked questions](#). The DOL stated that it would not bring enforcement actions against employers occurring in the first 30 days of the enactment of the FFCRA, i.e., March 18 through April 17, 2020, provided that the employer has made reasonable, good faith efforts to comply with the law. That temporary non-enforcement period has ended. Employers should ensure they have familiarized themselves with the eligibility and other requirements and posted the necessary [poster](#) either in a conspicuous physical place or, for employees not working on premises, to an internal or external website that hosts other employee information or by email.

In addition, New York has expanded its Paid Family Leave program and has enacted a new sick leave law, which will take effect in 2021. New Jersey has joined New York in expanding current laws to permit employees to take leave for certain reasons related to the COVID-19 pandemic. In addition, both states, as well as Connecticut, have clarified that employees may seek leave under already existing laws.

A. State Leave Programs – Changes

New York State – Paid Family Leave

New York State created an enhanced Paid Family Leave program for individuals affected by COVID-19. More specifically, if an individual (or such individual’s minor dependent child) is under a mandatory or precautionary order of quarantine or isolation issued by a governmental entity, such individual is showing symptoms of COVID-19 and cannot work through remote access, such individual may be eligible for compensation through New York’s Paid Family Leave, using a special application process and timeline for the Paid Family Leave benefits component of COVID-19 quarantine leave. Subject to certain requirements, an individual may be eligible to receive such individual’s regular pay under the special quarantine leave, although this amount is

attorneys

Michael J. Passarella
mpassarella@olshanlaw.com
212.451.2322

Marc N. Aspis
maspis@olshanlaw.com
212.451.2378

practice

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capped at \$2,884 per week for employees of certain small employers. This program has several additional beneficial provisions, such as (1) benefits received during COVID-19 quarantine leave do not have to be repaid; (2) there is no waiting period for benefits claimed as a result of mandatory/precautionary quarantine/isolation order; and (3) the employee's job is protected during the COVID-19 quarantine. For more information please refer to New York's [FAQs](#) about this program.

New York State – Sick Leave

As part of the state budget bill, New York State expanded its sick leave program. Starting January 1, 2021, employers with between 5 and 99 employees must provide 5 days of paid sick leave annually and those with more than 100 employees must provide 7 days of paid sick leave annually. Employers with 4 or fewer employees must provide 5 days of unpaid sick leave annually, although for employers with net income of more than \$1 million, such leave must be paid.

The new law also allows an employee to take leave for the sickness (or other conditions) of a family member, which is defined as a child, spouse, domestic partner, parent, sibling, grandchild, grandparent and the child or parent of the employee's spouse or domestic partner. We note that this program is substantially similar to New York City's existing Safe and Sick Leave policy, although the new State policy is more generous, in that very small employers with over \$1 million in income must provide paid leave and that large employers must provide 7 days (as opposed to 5).

New Jersey – Family Leave

New Jersey recently enacted [legislation](#) that expanded its Family Leave Act to account for COVID-19. Specifically, the law provides that employees may take up to 12 weeks of unpaid family leave (over a 24-month period) for certain qualified reasons. Employees may take leave to: (1) provide in-home care or treatment due to the closure of a child's school or day-care program because of COVID-19; (2) care for a family member who is subject to a mandatory quarantine order (because such family is sick with COVID-19); and/or (3) care for a family member who is subject to a voluntary quarantine order. A family member is defined as a child (includes biological, adopted, foster, stepchild), parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, any other individual related by blood to the employee and "any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship." The law is retroactive to March 25, 2020. For more information about the expansion of family leave, please see the [press release](#); for more information about existing programs in New Jersey, please see below.

[attorneys](#)

Michael J. Passarella
mpassarella@olshanlaw.com
212.451.2322

Marc N. Aspis
maspis@olshanlaw.com
212.451.2378

[practice](#)

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B. Existing State Leave Programs

New Jersey

In addition to various new and existing federal programs, New Jersey employees affected by COVID -19 may be eligible for earned sick leave, temporary disability and family leave insurance, and/or family leave, all as provided under state law. For more information, please refer to New Jersey's [FAQs](#).

Connecticut

In addition to various new and existing federal programs, Connecticut employees affected by COVID -19 may be covered under Connecticut's Paid Sick Leave and/or Family Medical Leave laws. For more information, please refer to Connecticut's [FAQs](#). At this point, Connecticut has not amended its existing leave laws to account for COVID-19.

C. Conclusion

We are continuously monitoring changes and updates to federal and state leave programs, and we will provide updates as they become available.

Olshan lawyers from multiple practice groups are working together with clients to address COVID-19-related matters, including the CARES Act stimulus programs (i.e., the PPP and EIDL) and other corporate matters, including contractual analysis and financing, tax, restructuring, employee benefits and employment practices, insurance coverage and litigation. Click [here](#) to access additional materials addressing issues raised by COVID-19.

Please contact the Olshan attorney with whom you regularly work or one of attorneys listed below if you would like to discuss this client alert or have questions about its content.

[attorneys](#)

Michael J. Passarella
mpassarella@olshanlaw.com
212.451.2322

Marc N. Aspis
maspis@olshanlaw.com
212.451.2378

[practice](#)

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