June 25, 2020

New York State Department of Health and New York State Department of Labor Guidance on Use of COVID-19 Sick Leave for Health Care Employers

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. The law provides paid and unpaid sick leave with access to expanded paid family leave and temporary disability depending on the size of the employer. All employees, regardless of the size of their employer, are entitled to job protection upon return from leave.

This document supplements prior guidance on the application of COVID-19 sick leave for health care employees. All prior guidance remains in effect.

1) For purposes of New York's COVID-19 sick leave law and this guidance, a "health care employee" is a person employed at a doctor's office, hospital, long-term care facility, outpatient clinic, nursing home, end stage renal disease facility, post-secondary educational institution offering health care instruction, medical school, local health department or agency, assisted living residence, adult care facility, residence for people with developmental disabilities, home health provider, emergency medical services agency, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, including any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions.

2) A health care employee who returns to work following a period of mandatory quarantine or isolation and who subsequently receives a positive diagnostic test result for COVID-19 must not report to work. The health care employee shall be deemed to be subject to a mandatory order of isolation from the Department of Health and shall be entitled to sick leave as required by New York's COVID-19 sick leave law, whether or not the health care employee already has received sick leave as required by the law for the first period of quarantine or isolation. However, the health care employee must submit documentation from a licensed medical provider or testing facility attesting that the health care employee has tested positive for COVID-19. The health care employee does not need to submit documentation of a positive result if the health care employee's employer gave the health care employee the test for COVID-19 that showed the positive result.

3) A health care employee who is subject to an order of quarantine or isolation but continues to test positive for COVID-19 after the end of such quarantine or isolation period must not report to work. The health care employee shall be deemed to be subject to a second mandatory order of isolation from the Department of Health and shall be entitled to sick leave as required by New York's COVID-19 sick leave law for the second period of isolation. However, the health care employee must submit documentation from a licensed medical provider or testing facility attesting that the health care employee has

received a positive diagnostic test for COVID-19 after completing the initial period of isolation. The health care employee does not need to submit documentation of a positive result if the health care employee's employer gave the health care employee the test for COVID-19 that showed the positive result.

4) In no event shall a health care employee qualify for sick leave under New York's COVID-19 sick leave law for more than three orders of quarantine or isolation. The second and third orders must be based on a positive COVID-19 test in accordance with paragraphs 2 and 3.

For additional information about COVID-19, please visit the New York State Department of Health's coronavirus website at https://cornavirus.health.ny.gov/home. For additional information about New York's COVID-19 sick leave law, please visit https://ny.gov/COVIDpaidsickleave.