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Emergency Sick Leave Legislation

On March 18, 2020 Governor Cuomo signed legislation (the “Act”) that implements emergency sick leave benefits and job protection to employees who are subject to a mandatory or precautionary order of quarantine or isolation issued by a governmental entity (“Quarantine Period”). The Act is effective immediately.

In order for benefits under the Act to apply, an employee must (1) exhibit symptoms, or (2) have been diagnosed with a medical condition and be unable to work, even remotely, during the Quarantine Period. Benefits under this Act may not be payable if an employee returns from a country the Centers for Disease Control and Prevention issued a level two or three travel health notice and the travel was not business related. In that case, employees may use employer-provided accrued sick time or unpaid leave.

Generally speaking, the benefits under the Act are based on the size of the employer as of January 1, 2020. Employers with 1-10 employees and a net income of less than \$1 million in the prior tax year are only required to provide unpaid sick leave during the Quarantine Period. The minimum requirements are as follows:

Employer Size

Minimum Sick Leave Requirements

Up to 10 employees with net income greater than \$1M in the prior tax year

5 days of paid sick leave and unpaid leave thereafter

11 – 99 employees

5 days of paid sick leave and unpaid leave thereafter

100 or more employees and public employers

14 days of paid sick leave

Employers with up to 100 employees must allow employees to be eligible for NY Paid Family Leave and NYS Disability benefits after they have exhausted their paid sick leave under the Act. The Act expands the definitions of “disability” and “family leave” under NYPFL and NYS DBL to allow for disabilities and leaves due to a Quarantine Period.

The leave provided under the Act may not be credited against an employee’s prior accrued leave and, upon returning to work after a leave taken pursuant to the Act, employees must be restored to their positions. Benefits may be payable concurrently upon the first full day of an unpaid Quarantine Period; however, the maximum weekly benefit an employee may receive is \$840.70 for paid family leave benefits and \$2,043.92 for disability benefits.

The federal government passed legislation including sick leave provisions which will need to be coordinated with benefits under the Act.

Employer Action

Employers should carefully review the Act’s provisions, work closely with counsel and communicate with employees to ensure they receive any benefits under the Act to which they may be entitled. Employers subject to the New York City Paid Sick and Safe Leave Act must also ensure requirements of that ordinance are also being met. Employers subject to the NYC Paid Sick and Safe Leave Act must continue to comply with its requirements.

Although included in the Act, this summary does not include the Governor’s comprehensive paid sick leave proposal contained in his executive budget, as it will not become effective until January 1, 2021. Further details will be provided at a later date.

Insurance Response

On March 2, 2020, Governor Cuomo issued a directive to New York health insurance carriers to take certain actions related to the COVID-19 outbreak and to remind insurers of their responsibilities under current law. The directive, issued in a Circular Letter by the Department of Financial Services, impacts fully insured plans in the small and large group markets and does not apply to self-insured plans.



At the time of this writing, the major insurance carriers have indicated that testing and other services related to COVID-19 will be covered with no member cost-sharing for insured plans. Employers should review the carrier's guidance with respect to their plans. Although the directive does not apply to self-insured plans, employers with self-insured plans can work with carriers and their third-party administrators and stop-loss carriers to implement similar actions.

Below are key points from the directive, many of which are simply reminders to carriers of what is already in place. It should be noted that the insurance industry and state and federal reactions to the outbreak continue to evolve and are subject to change.

- Carriers should devote resources to informing insureds of available COVID-19 benefits, including updating websites and staffing nurse helplines to handle the increased volume. All inquiries should be responded to in a timely fashion.
- Laboratory tests for COVID-19 are an essential health benefit and must be covered for small group health plans and will typically be available for large group health plans. Carriers are advised to waive any cost-sharing for COVID-19 laboratory tests received at an in-network provider office visit, urgent care center or for any emergency room visit. If in-network providers are unable to conduct testing, carriers must cover testing out-of-network.
- Carriers are reminded that New York laws prohibits carriers from excluding a service that is otherwise covered under a health insurance policy because the service is delivered via telehealth. Carriers are directed to ensure that their telehealth programs with participating providers are robust and will be able to meet any increased demand, as patients may be encouraged to seek treatment using telehealth services in lieu of office visits, due to the contagious nature of COVID-19.
- Carriers are directed to verify their provider networks are adequate to handle the increase in need for health services in the event more COVID-19 cases are diagnosed in New York, or to provide access to out-of-network providers at in-network cost-sharing rates.
- Utilization review decisions must be made in the timeframes required by law. Carriers should not use preauthorization requirements as a barrier to access necessary treatment for COVID-19 and should be prepared to expedite utilization review and appeal processes for services related to COVID-19 when medically appropriate.
- If a vaccine become available, carriers should cover the immunization immediately with no patient cost-sharing.
- New York insurance law requires carriers that cover prescription drugs must provide access to non-formulary prescription drugs through a standard and expedited review process when the insured is suffering from a health condition that may seriously jeopardize the individual's health.
- Inpatient hospital services cannot be subject to an annual or lifetime limit since it is considered an essential health benefit.
- Pre-hospital emergency medical services are to be covered for the treatment of an emergency condition when such services are provided by an ambulance service.
- Carriers must hold harmless insureds who receive surprise medical bills for services related to testing and treatment of COVID-19.

We will continue to monitor developments around COVID-19 and will continue to update you.