

COVID-19 Response Resource

NY Paid Sick Leave FAQ

April 2, 2020

Reliance Standard and Matrix Absence Management continue to ensure our clients, customers and business partners can rely on us through the COVID-19 pandemic. The following FAQ is designed to keep **employers with New York based employees** informed and up-to-date with the latest information and resources during this unprecedented time.

When is the new NY Paid Leave Plan for COVID-19 effective?	The NY Paid Leave act was signed into law 3/18/2020 and was effective immediately. It enacts new rules for paid leave benefits for a “mandatory or precautionary order of quarantine or isolation” under NY Paid Family Leave (PFL) and Disability Benefits Law (DBL).
Can you give us an easy-to-understand breakdown of the highlights of the NY Paid Leave Plan for COVID-19?	<p>The following benefits are available if a NY employee (or the employee’s dependent child, as applicable) is the individual subject of 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:</p> <ul style="list-style-type: none">• Groups with 1-10 employees and net income < \$1M: Employers do not have to provide paid sick leave. If an employee (or the employee’s dependent child) has an order of quarantine or isolation and cannot work due to COVID-19, the employee is eligible for PFL (to a max of \$840.70/wk) paid for the duration of the quarantine. For an employee’s quarantine or isolation, DBL benefits are then available (up to a max of an additional \$2043.92/wk) to supplement the PFL, payable concurrently, up to 100% salary. The usual DBL waiting period does not apply.• Groups with 1-10 EEs and net income > \$1M, and groups with 11-99 Employees: Employers must provide employees up to 5 calendar days of paid sick leave (payable for days normally worked during this period) during an employee’s order of quarantine or isolation. Thereafter, the PFL/DBL benefits apply for the duration of the employee’s (or employee’s dependent child’s) quarantine or isolation, as described above.• Groups with 100+ lives, and State & Public Employers of any size: Employers must pay Employees up to 14 days of sick leave (payable for days normally worked during this period) during an employee’s order of quarantine or isolation. The combo PFL/DBL benefit as described above is not applicable for this size group. <p>Paid sick leave under this program is paid entirely by the employer and enhanced PFL/DBL benefits are paid through the existing programs. Benefits are still limited to existing totals (10 weeks of PFL in 2020, 26 weeks of DBL and a total combined maximum of 26 weeks in a 52-week period).</p>
If an employee is able to work during their own or a child’s quarantine, are benefits available?	No. Benefits are not available if the person is asymptomatic or has not been diagnosed and is able to work while in quarantine via telecommuting or otherwise. Similarly, benefits are not available if the employee is home due to a minor dependent child’s quarantine but is still able to work.
What kind of order will qualify the employee for the paid sick leave and/or PFL/DBL benefits?	The quarantine or isolation must be a “mandatory or precautionary order of quarantine or isolation issued by the state of NY, the Dept. of health, local board of health, or any government entity.” NY has issued directions addressing how to obtain an appropriate order of quarantine.

<p>Does the Governor’s executive order for “NY State on PAUSE” count as a valid “mandatory or precautionary order of quarantine or isolation”?</p>	<p>No, based on the information we have to date, the Governor’s Executive Order is not an order of quarantine. For example, an individual at a non-essential business could go to work at an essential business without violating the order. The individual is not quarantined.</p>
<p>What are the two types of quarantine and can you give examples of both?</p>	<p>The NY State government refers to two types of quarantine related to COVID-19:</p> <p>Mandatory Quarantine is required and directed by the local health department by a quarantine order. This is required for the following persons:</p> <ul style="list-style-type: none"> • Persons who tested positive for the virus that causes COVID-19 by a clinical test (regardless if they are symptomatic or not). • Persons who had direct contact (within 6 feet) with a confirmed case who tested positive for the virus that causes COVID-19 (regardless if they are sick or not). • Persons who traveled to a highly affected area, and have symptoms of fever, cough, and trouble breathing. NYS considers any county that has a CDC-designated travel warning level of ‘3’ (avoid nonessential travel) and level ‘2’ (practice enhanced precautions) as countries that are highly affected by COVID-19. • Any other person whose healthcare provider and local health department believe should be quarantined. <p>Precautionary Quarantine is required and directed by the local health department. This is required for the following persons:</p> <ul style="list-style-type: none"> • Travel to a highly affected area and are not sick. NYS considers any county that has a CDC-designated travel warning level of ‘3’ (avoid nonessential travel) and level ‘2’ (practice enhanced precautions) as countries that are highly affected by COVID-19. • ‘Proximate exposure’ to a confirmed case who tested positive for the virus that causes COVID-19 in a congregate setting (e.g., within more than 6 feet such as at social gatherings, conferences, etc.), and not sick. If this person develops symptoms of fever cough, and difficulty breathing, they will be placed under Mandatory Quarantine. • Any other person whose healthcare provider and local health department believe should be quarantined.
<p>Does the # of employees refer to NY-only employees or all employees of the employer?</p>	<p>The most recent input we’ve received from the WC Board is that it is the total number of employees that should be used in this determination, not only the NY-based employees. We will rely on the employer to determine how many employees they have.</p>
<p>For the NY Paid Sick Leave law, how is the employer’s net income requirement determined?</p>	<p>The net income requirement is for the 2019 calendar year.</p>
<p>Are the “5 days” and “at least 14 days” of required paid sick leave treated as business days or calendar days?</p>	<p>These are to be treated as “calendar days,” with the employee getting paid for any work days during those 5 or 14 calendar days.</p>

<p>Can you clarify what is payable for an employee's own quarantine vs. a minor dependent child's quarantine under the NY Paid Leave Plan?</p>	<p>For the employee's own quarantine, most employees can receive paid sick leave. The amount depends on the employer's size and 2019 net income. After that paid sick leave is used, or if none is available, the employee may be eligible to receive weekly wages through a combination of Paid Family Leave and disability benefits up to a maximum of \$2,884.62 per week.</p> <p>For the quarantine of the employee's minor dependent child, the employee may be eligible for paid leave under NY PFL up to a maximum of \$840.70 per week.</p>
<p>Do all "standard" DBL and PFL rules apply to these COVID-19 benefits?</p>	<p>Yes, standard DBL and PFL rules apply if not modified by the new Paid Sick Leave law. For example, an employee must still satisfy the eligibility rules for PFL (26 weeks of employment with the employer for employees who work 20 or more hours per week, and 175 days of employment with the employer for employees who work under 20 hours per week). Similarly, benefits are still limited to existing totals (10 weeks of PFL in 2020, 26 weeks of DBL and a total combined maximum of 26 weeks in a 52-week period). As a result, someone who has exhausted their DBL and/or PFL benefits for the benefit year would not be eligible for additional benefits due to an order of quarantine or isolation.</p>
<p>Are these COVID PFL/DBL new provisions only payable for one period of quarantine per insured?</p>	<p>The answer to this question is still not clear, but the act does not specify that the benefits are available only for one covered event, and an employee or dependent child could potentially be quarantined more than once.</p> <p>Example – An employee takes PFL due to the quarantine of their minor dependent child and receives PFL benefits during that quarantine. The employee then is subject to an order of quarantine for himself. It appears the employee could then receive paid sick leave and the combined PFL/DBL benefits.</p>
<p>Do these benefits apply if I am able to work remotely or telework?</p>	<p>No, these benefits are only for those employees who are quarantined and unable to work.</p>
<p>Is there any job protection for employees while on this leave?</p>	<p>Yes, all employees are given full job protection for the duration of the quarantine order. This includes protections against discrimination and relation for exercising rights under the new law, as well as restoration to the same position the employee held before the quarantine leave.</p>
<p>How does the NY plan work with the new federal benefits under FFCRA?</p>	<p>The NY plan is secondary to the federal sick leave plan, which means that the federal plan pays first and the NY plan supplements the FFCRA benefits, up to the employee's full pay. Any NY PFL/DBL benefits payable will be offset by any federal sick leave benefits that are paid or payable.</p>
<p>Will STD coverage offset for the NY sick leave/PFL/DBL benefits payable under this NY Paid Sick Time Plan for COVID-19?</p>	<p>If STD benefits are payable for a quarantine and if offsets are allowed for government-mandated payments, an STD plan will offset with any benefits payable (both sick leave and PFL/DBL) for the employee's own disability due to COVID-19 under this NY Paid Leave law under the same offset items that allow us to offset now for state disability plans or compulsory benefits. The ability to offset will depend on the specific provisions of the STD plan.</p>
<p>How does an employee apply for the sick leave benefits payable under this NY plan?</p>	<p>The employee should apply directly to the employer for any sick leave benefits payable under this plan. This benefit is paid directly by the employer, not through the NY PFL or DBL programs.</p>

<p>How does an employee apply for DBL/PFL claims for COVID-19?</p>	<p>There are special claim forms for COVID-19 quarantine claims for NY DBL/PFL. The employee should apply for PFL/DBL benefits directly with the insurer using the special COVID-19 forms found on following link on the State of New York website (click on the “How to Apply” link for the appropriate claim situation): https://paidfamilyleave.ny.gov/COVID19.</p> <p>There are different claim forms for the employee’s own quarantine and the minor child’s quarantine.</p>
<p>Are these combination PFL/DBL benefits payable for the entire duration of the quarantine?</p>	<p>Probably, for groups with less than 100 employees. The expectation is that most of these will last 14 calendar days, but benefits are payable for longer if the quarantine lasts longer. However, PFL and DBL benefits for any reason, including the enhanced PFL and DBL benefits for quarantine, are capped in 2020 at the standard maximums per 52-week period (10 weeks for PFL, 26 weeks for DBL, and 26 combined total for both).</p>
<p>If an employer has more than 100 employees, it looks like they are not eligible for the enhanced COVID-19 PFL/DBL benefits. What happens if an employee is disabled due to COVID-19 after the 14 days of paid sick leave for quarantine?</p>	<p>Groups with 100 or more lives are not eligible for the combination PFL/DBL benefits under this law. After an employee has received paid sick leave for the 14-day period, they can apply for “regular” DBL benefits if the employee is disabled. The employee can apply for “regular” PFL if the employee has to take care of a family member with a serious health condition, including COVID-19.</p>
<p>Has there been any change to the “regular” DBL or PFL program as a result of COVID-19?</p>	<p>Yes. The recent Emergency Regulation to the standard PFL program has changed the definition of “serious health condition” to include a positive COVID-19 diagnosis by a health care provider. This would presumably allow an insured whose eligible family member is asymptomatic to still be eligible for PFL benefits under the “regular” PFL program.</p>