KAUFMAN DOLOWICH LLP

KD ALERT - NEW YORK COVID-19 UPDATE: ADDITIONAL WORKFORCE RESTRICTIONS IMPOSED AND NEW PAID LEAVE LAW SIGNED

Governor Cuomo Mandates a Further Workforce Reduction

Today, Governor Andrew Cuomo announced a revised statewide mandate that no business can have more than twenty-five percent (25%) of its workforce report to work outside of their home. The mandate, which becomes effective tomorrow, March 20, 2020 at 8:00 P.M., does not apply to businesses that perform "essential services." Some examples of businesses that provide "essential services" are:

- **Health care operations, including research and laboratory services (most elective surgeries have been asked to postpone)**
- **Infrastructure, including utilities, telecommunication, airports and transportation**
- **Manufacturing, including food processing and pharmaceuticals**
- **Retail, including grocery stores and pharmacies**
- **Services, including trash collection, mail and shipping**
- **News media**
- **Banks and related financial institutions**
- **Providers of basic necessities to economically disadvantaged populations**
- **Construction**
- **Vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses.**
- **Vendors that provide essential services or products, including logistics and technology support, child care**
- **Services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public**

The mandate will remain in effect until April 17, 2020.

New York Enacts Emergency Paid Leave Law

The State of New York also passed a new law that provides certain employee benefits in emergency situations due to COVID-19.

The new law requires employers, depending on size and net income, to provide sick leave benefits for each employee who is subject to 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 with the authority to issue such an order due to COVID-19.

Specifically, private employers with 10 or fewer employees, must provide those affected with unpaid sick leave until the termination of any order of quarantine or isolation. During the period of quarantine or isolation, employees are eligible for New York State Paid Family Leave Act ("PFL") and disability benefits, including wage replacement for their salaries up to $150,000.

The new law also provides that private employers with 10 or fewer employees *and a net income in excess of one million dollars in the previous tax year must provide employees under mandatory or precautionary quarantine or isolation with five days of paid sick leave until the end of any order of quarantine or isolation. After the five days are exhausted, employees are then eligible for PFL and disability benefits, including wage replacement for their salaries up to $150,000.*

For private employers with between 11 and 99 employees, each employee subject to any order of quarantine or isolation must be provided with 5 paid sick days until the termination of such order. After the exhaustion of the five days, employees are then be eligible for PFL and disability benefits including wage replacement for their salaries up to $150,000.

Additionally, under the law, private employers with 100 or more employees are required to provide employees under mandatory or precautionary quarantine or isolation with 14 days of paid sick leave. Notably those employees are not eligible for PFL and disability benefits after the paid sick leave expires.

The law also guarantees at least 14 paid sick days to each public employee subject to a mandatory or precautionary order of quarantine isolation.

It is worth noting that the law is not clear as to whether the sick leave requirement applies retroactively. For the last few weeks, employers have been closing their doors either on their own accord or because of orders issued by entities with the authority to limit business operations. For example, Governor Cuomo ordered restaurants, bars, gyms, and movie theaters to close as of March 16, 2020. Governor Cuomo has also instituted mandatory workforce reductions. The question remains as to whether those employers would have to retroactively comply with the emergency sick leave provisions.

Should an employee take leave as a result of a mandatory or precautionary order of quarantine or isolation, the law provides that the employee not lose his or position or seniority. Further, the law prohibits an employer from discriminating or retaliating against an individual who takes leave under this law.

The law does not provide paid sick leave benefits, or any other paid benefits for that matter, to an employee that is subject to a mandatory or precautionary order of quarantine as a result of the employee's travel to a country that the Centers for Disease Control and Prevention has a level two or three travel health notice unless the employee traveled to the level two or three country as part of their employment or at the direction of his or her employer.

The definitions of "disability" and "family leave" have also been expanded to accommodate those afflicted by COVID-19 quarantines and isolations. In addition, the waiting period for unemployment compensation benefits has been removed where an employee is out of work as a result of the employer's closure relating to COVD-19. However, there is no indication how receiving benefits under PFL, and disability could impact the amount of benefits an employee could receive through unemployment compensation.

The new law does not apply in circumstances where an employee is deemed asymptotic or has not been diagnosed with any medical condition, and has the ability to work remotely, or has other similar access, during a mandatory or precautionary order of quarantine or isolation. In other words, employers are not required to provide sick leave if the employee is capable of working from home and is not afflicted by COVID-19.

Finally, with respect to paid benefits in emergency situations related to COVID-19, the law provides that if the federal government provides sick leave and/or employee benefits for employees relating to COVID-19, the benefits described above would not be available to any employee that would have been subject to these provisions. However, if the benefits provided in the law are in excess of what would be provided by the federal government, the employees would still be eligible for the above listed benefits.

What's Next?

While employers are already scrambling to keep their businesses afloat during this pandemic, leave policies should be immediately updated, appropriate notices have to be circulated, and managers toned to be trained on employees' rights and rapidly educate themselves about their new responsibilities to employees.

The attorneys in KD's Labor & Employment Law Practice Group continue to closely monitor developments on the law and update employers as the legal landscape continues to evolve. If you have questions about these developments, complying with the above regulations or are in need assistance in implementing the new policies, please contact one of the experienced Labor & Employment Law attorneys at Kaufman Dolowich & Voluck at (516) 681-1100.

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