

**From:** [Ferrara Fiorenza News](#)  
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## **COVID-19 Legal Update: New Executive Order Requires Workforce Reduction and New Law Grants Paid Leave Benefits**

### **Governor's Executive Order Requires Most Employers to Reduce Workforce by 50%, "Essential Businesses" Exempt**

Governor Cuomo's much anticipated Executive Order (No. 202.6) mandating a 50% reduction in the workforce of private and not-for-profit entities has just been issued. This requirement cuts across all departments and shifts of a company and mandates that, by 8 PM on March 20, 2020, only 50% of the total number of employees reporting to a site be allowed to work. However, the Order notes that "[a]ny essential business or entity providing essential services or functions shall not be subject to the in-person restrictions."

We have had numerous questions about what type of business may qualify for the "essential business" exemption. The Order lists the following businesses as qualifying:

"... essential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; 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 and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public...."

We believe based on the final wording of the Executive Order and the commentary we have seen that other businesses could qualify as well. There are many ancillary businesses such as supporting logistics, the food industry and supply chain, etc. that could potentially qualify. The Order notes that:

"Any other business may be deemed essential after requesting an opinion from the Empire State Development Corporation, which shall review and grant such request, should it determine that it is in the best interest of the state to have the workforce continue at full capacity in order to properly respond to this disaster. No later than 5 p.m. on March 19, 2020, Empire State Development Corporation shall issue guidance as to which businesses are determined to be essential."

We advise that if you believe that your business qualifies as "essential" that you immediately request consideration for an exemption from the Empire State Development Corporation. You can obtain additional information from the Governor's website at <https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> and the Empire State Development Corporation at <https://esd.ny.gov/novel-coronavirus-faq-businesses>.

Please feel free to contact us for assistance in discussing your work threshold or exemption issues.

### **New State Paid Sick Leave Requirements**

Governor's Program Bill #9 (S.8090/A.10152) was introduced March 17, 2020. It was then passed and

signed the following day. It has two main parts. The first one would provide benefits to both private and public sector employees who are subject to orders of quarantine or isolation due to COVID-19. The second one would require private employers to provide paid sick leave to their employees.

#### *Benefits for Employees Subject to Ordered Quarantine or Isolation Due to COVID-19*

Section 1 of the legislation would apply to employees who are subject to any order of quarantine or isolation issued by the State of New York, the New York State Department of Health, a local board of health, or any other governmental entity authorized to issue such an order due to COVID-19. They would be entitled to the following benefits:

- Private employers with 10 or fewer employees and a net income less than \$1 million would be required to provide job protection for the duration of the quarantine order. Affected employees would be able to use paid family leave and disability benefits (short-term disability) for the period of quarantine, including wage replacement for their salaries up to \$150,000.
- Private employers with 11-99 employees, and employers with 10 or fewer employees and a net income greater than \$1 million, would be required to provide at least 5 days of paid sick leave and job protection for the duration of the quarantine order. Affected employees would be able to use paid family leave and disability benefits (short-term disability) for the period of quarantine, including wage replacement for their salaries up to \$150,000.
- Private employers with 100 or more employees, as well as all public employers (regardless of number of employees), would be required to provide at least 14 days of paid sick leave and guarantee job protection for the duration of the quarantine order.

An employee would not be eligible to receive any of the paid benefits under this section if the employee is being quarantined because the employee traveled to a country for which the Centers for Disease Control and Protection ("CDC") has a level 2 or 3 travel notice, the travel was not part of the employee's employment or at the direction of the employer, and the employee was provided notice of the travel health notice and the limitations of this subdivision of the law before the travel. Such an employee could use any accrued leave provided by the employer. After the employee exhausted any accrued leave, the employee could take unpaid sick leave for the duration of the quarantine or isolation.

The provisions of this act would not apply to an employee who is deemed asymptomatic or has not yet been diagnosed with any medical condition, and who is physically able to work while under the order of quarantine or isolation, whether through remote access or other similar means. In other words, if an employee is directed not to come to work as a part of a pre-emptive attempt to avoid the spread of the virus (as opposed to complying with a specific governmental order), the law and its benefits would not be implicated.

#### *Permanent Paid Sick Leave Benefits*

Section 2 of the proposed legislation would carry out part of the Governor's proposed New York State budget. It would take effect 180 days after being signed into law (in mid-July). It would provide the following benefits only to employees of private sector employers:

- Employers with 4 or fewer employees and a net income less than \$1 million would be required to provide at least 5 days of unpaid sick leave each year.
- Employers with 5-99 employees, and employers with 4 or fewer employees and a net income greater than \$1 million, would be required to provide at least 5 days of paid sick leave each year.
- Employers with 100 or more employees would be required to provide at least 7 days of paid sick leave each year.

Employees would be permitted to accrue sick leave at a rate of at least 1 hour per every 30 hours worked (subject to the use and accrual limitations).

Starting on January 1, 2021, employers would provide accrued sick leave. It could be used in relation to a mental or physical illness, injury or health condition of an employee or an employee's family member. It could also be used for an absence from work due to domestic violence, a sexual offense, stalking or human trafficking.

Unused sick leave could be carried over to the following year (up to 40 hours for employees with fewer than 100 employees, or 56 hours for larger employers).

If an employer voluntarily provides an equivalent sick leave policy, it would not have to provide any additional sick leave pursuant to this section.

A collective bargaining agreement entered into on or after the effective date of this section could, in lieu of the leave under this section, provide a comparable benefit in the form of paid days off. The parties could also negotiate terms and conditions of sick leave that are different from this section. In either case, the agreement would have to specifically acknowledge the provisions of this section.

If you have any questions, please do not hesitate to contact us.



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