



COVID-19 HR Solutions Updates & FAQ

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This information has been provided as an informational resource for NFP clients and business partners and is not intended to and does not constitute legal advice. Its purpose is to provide general guidance, and the materials presented are not intended to address specific risk scenarios. Issues related to Coronavirus are changing at a rapid pace. The materials presented today may be outdated in the near term. Please consult your legal counsel for advice on your particular facts and circumstances.

Agenda

- I. State Legislation
 - i. California
 - ii. Washington DC & Seattle
 - iii. New Jersey
 - iv. New York
- II. Additional Resources
- III. Q&A



State Legislation in Response to COVID-19



State Legislation in Response to COVID-19

California

California has added COVID-19 reasons to its state benefit plans. As outlined in the chart, employees are now covered for the following COVID-19 related reasons:

- If an employee is unable to work due to medical quarantine or illness related to COVID-19 (certified by a medical professional).
- If an employee is unable to work because of are caring for an ill or quarantined family member with COVID-19 (certified by a medical professional).
- If an employee has lost their job or have had hours reduced for reasons related to COVID-19.
- If an employee is sick or a family member is sick or for preventative care when civil authorities recommend quarantine.
- If an employee is unable to do their usual job because of exposure to and contracted COVID-19 during the regular course of work, this may make some be eligible for workers' compensation benefits.

The following benefit plans have been expanded to provide benefits under these conditions:

- Disability Insurance
- Paid Family Leave
- Unemployment Insurance
- Paid Sick Leave
- Workers' Compensation

State Legislation in Response to COVID-19 - California

| Program | Why | What | Benefits |
|-------------------------------|---|---|---|
| Disability Insurance | Unable to work due to medical quarantine or illness related to COVID-19 (certified by a medical professional) | Short-term benefit payments to eligible workers who have a full or partial loss of wages due to a non-work-related illness, injury, or pregnancy | Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 52 weeks. |
| Paid Family Leave | Unable to work because of are caring for an ill or quarantined family member with COVID-19 (certified by a medical professional) | Up to six weeks of benefit payments to eligible workers who have a full or partial loss of wages because they need time off work to care for a seriously ill family member. | Approximately 60-70 percent of wages (depending on income); ranges from \$50-\$1,300 a week for up to 6 weeks. |
| Unemployment Insurance | Lost job or have had hours reduced for reasons related to COVID-19 | Partial wage replacement benefit payments to workers who lose their job or have their hours reduced, through no fault of their own. | Range from \$40-\$450 per week for up to 26 weeks. |
| Paid Sick Leave | Sick or a family member is sick or for preventative care when civil authorities recommend quarantine | The leave accumulated or employer has provided, under the Paid Sick Leave law. | Paid to the individual's regular rate of pay or an average based on the past 90 days. |
| Workers' Compensation | Unable to do your usual job because of exposure to and contracted COVID-19 during the regular course of work, may make some be eligible for workers' compensation benefits. | Benefits include temporary disability (TD) payments, which begin when doctor(s) say not to do usual work for more than three days or are hospitalized overnight. Entitled to TD for up to 104 weeks. TD stops when either there is return to work, a doctor release for work, or a doctor says the illness has improved as much as it's going to. | TD generally pays two-thirds of the gross wages lost while recovering from a work-related illness or injury, up to maximum weekly amount set by law. In addition, eligible employees are entitled to medical treatment and additional payments if a doctor determines a permanent disability was suffered because of the illness. |

State Legislation in Response to COVID-19 – Cal WARN

Is there a change to the 60-day notice requirement in the California WARN Act because of the COVID-19 pandemic?

On March 17, 2020, Governor Newsom issued Executive Order N-31-20 (N-31-20), which suspends some employers' compliance with certain sections of the California Worker Adjustment and Retraining Notification Act (Cal-WARN).

- It temporarily suspends the 60-day notice requirement in the California WARN Act for those employers that give written notice to employees and satisfy other conditions. The suspension was intended to permit employers to act quickly in order to mitigate or prevent the spread of the new coronavirus.

What impact does the Executive Order have on an employer's ability to close an establishment (temporarily or permanently) because of COVID-19?

The Executive Order does not suspend the California WARN Act in its entirety, nor does it suspend the law for all covered employers. You still must give as much notice as practicable as provide notice to all:

- Affected employees;
- Employment Development Department (the "EDD");
- local workforce investment board; and
- chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs.

State Legislation in Response to COVID-19

Washington DC - COVID-19 Response Emergency Act of 2020

The COVID-19 Response Emergency Act became effective on March 17, 2020 and is effective for 90 days, however further legislative action is expected that will keep it in effect for at least 270 days.

- The Act amends the District of Columbia Family and Medical Leave Act (DCFMLA) to grant leave to employees for reasons related to the coronavirus pandemic.
- The Act also makes it easier for employees who have lost work due to the coronavirus to qualify for unemployment compensation from the District.

The Act amends the DCFMLA to provide for a new category of job-protected leave—“Declaration of Emergency Leave” (DOE Leave) for employees who are unable to work as a result of circumstances related to the coronavirus pandemic.

The Act provides that the need for such leave is established if:

- (1) the Mayor, Department of Health, or any other District or federal agency (Agency) or medical professional has recommended the employee self-quarantine or self-isolate; or
 - (2) the government mandates quarantine or isolation.
- The Emergency leave applies to District employers of any size (unlike other forms of DCFMLA leave, which apply only to employers with 20 or more employees in the District.)
 - Employees who have been ordered or recommended to quarantine or isolate by an Agency or a medical professional are covered immediately. (The DCFMLA’s usual eligibility requires that an employee must have worked for the employer for at least one year and 1,000 hours in the prior 12 months, do not apply.)

State Legislation in Response to COVID-19

Washington DC - COVID-19 Response Emergency Act of 2020

- DOE Leave can be taken for the duration of the period for which the Mayor's declaration of a public health emergency is in effect (the Mayor declared the coronavirus a public health emergency on March 11, 2020). (Unlike other forms of DCFMLA leave, which are limited to 16 workweeks in a 24-month period.)
- Like other forms of DCFMLA leave, DOE Leave is unpaid.
- Effective July 1, 2020, the District's Universal Paid Leave Amendment Act of 2016 (UPLA) allows employees to receive wage replacement benefits from the District for certain family and medical leave reasons. However, without further legislative action, it does not appear that these wage replacement benefits are available for DOE Leave that does not otherwise qualify under the UPLA.
- DCFMLA's requirement that employers restore employees on family or medical leave to the same or equivalent position *has not* been amended to include DOE Leave.
- Likewise, the requirement that employers maintain health insurance benefits during family or medical leave *has not* been amended to extend to DOE Leave. Employers should tread cautiously at this time before denying job restoration or benefits to employees who take DOE Leave.
- The Act can be found here: <http://lims.dccouncil.us/Download/44469/B23-0718-SignedAct.pdf>

State Legislation in Response to COVID-19

Washington DC - COVID-19 Response Emergency Act of 2020

The Act expands employee eligibility for unemployment insurance (UI) benefits while the Mayor's declaration of a public health emergency is in effect and grants UI benefits to "affected employees," defined as employees who have become unemployed or partially unemployed by circumstances related to the coronavirus.

- It includes those who have lost work due to:
 1. being quarantined or isolated by the Department of Health or other Agency;
 2. choosing to self-quarantine or self-isolate consistent with the recommendations or guidance of an Agency or a medical professional; or
 3. working for an employer that stopped or reduced operations due to an order or guidance of the Mayor or Department of Health, or due to a reduction in business revenue resulting from circumstances related to the coronavirus.
- Employees are eligible for UI under the new law even if the employer has provided a certain date for return to work, and even where the employee has a reasonable expectation of continued employment with the employer.
- The Act allows employees to receive UI even if they quit their job, under certain circumstances.
- Unlike employees who receive UI for other reasons, those employees receiving UI due to the coronavirus are not required to search for work to remain eligible for benefits.
- UI benefits paid for under these provisions related to COVID-19 will not be charged to an employer's experience rating, an employer's UI contributions should not increase as a result of these benefits.

State Legislation in Response to COVID-19

Washington DC Extended State Leave Benefits

| COVID-19 SCENARIOS | | Paid Sick Leave (Employer Paid) | Unemployment Insurance | | Paid Family & Medical Leave | Industrial Insurance (L&I) |
|--------------------|--|------------------------------------|------------------------|----------------|-----------------------------------|----------------------------------|
| | | Current Law | Current Law | Emergency Rule | Current Law | Current Law |
| 1 | Worker is mildly ill with COVID-19. | ✓ | ✗ | ✓ | ? | ? |
| 2 | Worker is severely ill with COVID-19. | ✓ | ✗ | ✗ | ✓ | ? |
| 3 | Worker was exposed and quarantined. Business remains open. | ✓ | ✗ | ✓ | ✗ | ? |
| 4 | Worker is caring for sick family member. | ✓ | ✗ | ? | ✓ | ✗ |
| 5 | Schools are closed by a public official because of COVID-19 and worker has no childcare. | ✓ | ✗ | ? | ✗ | ✗ |
| 6 | Worker is immune-compromised and advised to self-quarantine. | ? | ✗ | ✓ | ? | ✗ |
| 7 | Worker is following the advice of public health and government officials to self-quarantine and chooses not to go to work. | ✗ | ✗ | ✓ | ✗ | ✗ |
| 8 | Employer must shut down due to a quarantine by a public official. | ✓ | ✓ | ✓ | ✗ | ? |
| 9 | Employer shuts down due to a business slowdown or lack of demand. | ✗ | ✓ | ✓ | ✗ | ? |
| 10 | Employer reduces available hours due to business slowdown or lack of demand. | ✗ | ✓ | ✓ | ✗ | ? |
| 11 | Employer stays open in defiance of public health urging to close. | ✗ | ? | ? | ✗ | ? |
| 12 | Health care workers and first responder are under quarantine | ✓ | ✗ | ✗ | ✗ | ✓ |

State Legislation in Response to COVID-19

Washington (Seattle)

Seattle Paid Sick and Safe Time (PSST)

On March 18, 2020 Seattle amended its Paid Sick and Safe Time (PSST) in order to allow employees to use their PSST for COVID-19 related issues:

- When an employee's family member's school or place of care has been closed.
- Employers with 250 or more full-time equivalent employees must allow their employees to take PSST when their place of business has been closed for any health or safety reasons.

Currently, under the PSST regulations:

- All employers are required to provide all employees with paid sick and safe time. This includes full-time, part-time, temporary, exempt, and non-exempt employees.
- Paid Sick and Safe Time is earned over time. The amount depends on how many hours an employee works and the size of their employer's business. Visit the Office of Labor Standards' website for more details: <https://www.seattle.gov/laborstandards/ordinances/paid-sick-and-safe-time>

State Legislation in Response to COVID-19

New Jersey State Leave Benefits

NJ Temporary Disability Insurance (TDI)

Temporary Disability Insurance provides cash benefits to New Jersey workers who suffer an illness, injury, or other disability that prevents them from working, and wasn't caused by their job. Most employers in New Jersey are required to have Temporary Disability Insurance for their employees.

Expanded reasons covered under the NJ TDI due to COVID-19:

1. A person who has COVID-19, or symptoms of COVID-19.
2. Worker was exposed and quarantined. Business remains open.
3. Worker is immune-compromised and advised by healthcare provider to self-quarantine.
4. Health care worker exposed at work and self-quarantined.
5. Worker is caring for a sick family member.

NJ Unemployment

New Jersey Department of Labor and Workforce Development (NJDOLE) issued a guide outlining COVID-19 related unemployment benefits for New Jersey employees.

- The guide provides that unemployment benefits are available to employees who are out of work due to voluntary or government-mandated business closures or whose hours are reduced due to COVID-19 related business slowdowns.
- An employee is not entitled to unemployment benefits if the employee chooses to stay home to care for a child due to a school closure, but the employee may use earned sick leave.
- Employees who are permitted by their employer to work remotely from home are not eligible for unemployment benefits. However, if an employee's work-from-home arrangement results in reduced hours, the employee may be eligible for unemployment benefits.

State Legislation in Response to COVID-19

New Jersey State Leave Benefits

NJ Sick Leave Law

New Jersey's Sick Leave Law gives New Jersey employees the right to accrue and use up to 40 hours of paid sick leave (PSL) in any period of 12 consecutive months. Employees may now use this time for COVID-19 related reasons:

1. A person who has COVID-19, or symptoms of COVID-19.
2. Worker was unable to work because of school or daycare closed for a public health reason.
3. Worker was exposed and quarantined. Business remains open.
4. A person who is out of work because employer was ordered closed.
5. Employer stays open in defiance of public health urging to close, and worker refuses to work.
6. Worker is afraid of gathering in a group and refuses to go to work (self-distancing).
7. Worker is immune-compromised and advised by healthcare provider to self-quarantine.
8. Health care worker exposed at work and self-quarantined.
9. Worker is caring for a sick family member.

New Jersey Law Against Discrimination (NJLAD)

As of March 19, 2020 disability related to COVID-19 is now covered under the already expansive New Jersey Law Against Discrimination (NJLAD) which prohibits employers from discriminating or retaliating against employees because of their membership in various protected classes.

- An employer may not discriminate or retaliate against an employee who requests or takes leave because of symptoms or a diagnosis of COVID-19.
- In addition, an employee who takes such leave must be returned to his or her same position held prior to the commencement of the leave.

State Legislation in Response to COVID-19

New Jersey Expanded State Leave Laws

| COVID-19 SCENARIOS | | EARNED SICK LEAVE | UNEMPLOYMENT INSURANCE | TEMPORARY DISABILITY/FAMILY LEAVE INSURANCE | WORKERS' COMPENSATION |
|--------------------|---|-------------------|------------------------|---|-----------------------|
| 1 | A person who has COVID-19, or symptoms of COVID-19. | YES | NO | YES | POSSIBLY |
| 2 | Worker was unable to work because of school or daycare closed for a public health reason. | YES | NO | NO | NO |
| 3 | Worker was exposed and quarantined. Business remains open. | YES | NO | YES | POSSIBLY |
| 4 | A person who is out of work because employer voluntarily closed. | NO | YES | NO | NO |
| 5 | A person who is out of work because employer was ordered closed. | YES | YES | NO | NO |
| 6 | Worker has less hours available due to business slow down or lack of demand. | NO | YES | NO | NO |
| 7 | Employer stays open in defiance of public health urging to close, and worker refuses to work. | YES | POSSIBLY | NO | NO |
| 8 | Worker is afraid of gathering in a group and refuses to go to work (self-distancing). | YES | NO | POSSIBLY | NO |
| 9 | Worker is immune-compromised and advised by healthcare provider to self-quarantine. | YES | NO | YES | NO |
| 10 | Health care worker exposed at work and self-quarantined. | YES | NO | YES | YES |
| 11 | Worker is caring for a sick family member. | YES | NO | YES | NO |

State Legislation in Response to COVID-19

New York Emergency COVID-19 Paid Sick Leave

NY State helps to fill the void on the State level through “Emergency COVID-19 Paid Sick Leave” for employees who can’t work while under quarantine. *This means, starting April 1st, the Federal program becomes the primary source of COVID-19 paid sick leave in NYS.*

Effective March 18, 2020

- Applies to employees who are ordered by the State of NY, Department of Health, a local Board of Health, or any other governmental entity to be under mandatory or precautionary quarantine/isolation due to COVID-19.
- Employees must be unable to perform their core job duties or any alternative responsibilities the employer may offer during the quarantine.
- If the employee doesn’t show any symptoms (or has not been diagnosed yet) and can work while under quarantine, “Emergency COVID-19 Paid Sick Leave” benefits do not apply.

Starting April 1st

- Once the Federal Program goes into effect in April, it will become the **primary source** for COVID-19 benefits.
- After that date, employees need to file for benefits under the Federal plan, not at the State level.
- The NY program will only be available for New Yorkers whose salary exceeds the Federal program’s and can file for supplemental benefits bridging the gap between the Federal and State caps.

State Legislation in Response to COVID-19

New York Emergency COVID-19 Paid Sick Leave

- Eligible employees receive job protection (job restoration and non-retaliation provisions) and paid sick leave during the time of their qualified quarantine.
- The actual benefit structure depends on the size and annual net income of the employer (as illustrated in the chart.)
- Paid sick leave is only for the period of quarantine which is 14 days. (A portion of this time may be supplemented by STD/PFL in certain circumstances – depending on employer size/revenue.)
- Once the Federal program goes into effect, benefits under the NY program will end, even if the 14-day quarantine has not been completed yet. Employees will have to file a new, federal claim for the remainder of their quarantine.
- Sick time paid under the act is not taken from an employee's accruals under an individual employer plan.
- The legislation also provides Paid Family Leave for working parents if their minor dependent child has to go into mandatory or precautionary quarantine/isolation.

State Legislation in Response to COVID-19

New York State Emergency COVID-19 Paid Sick Leave

| Employer Size (by employee count) | Job protection | Covered Duration | Employer's Role | Employee's Pay/Benefits |
|--|----------------|---|--|--|
| 1 -10 (less than \$1m annual net income) | Yes | Duration of quarantine <i>until Federal program starts</i> | Unpaid sick leave until end of quarantine | Sick leave is entirely compensated through DBL/PFL benefits concurrently: Combined maximum of \$2,884.62/week |
| 1 -10 (more than \$1m annual net income) | Yes | Duration of quarantine <i>until Federal program starts</i> | At least 5 days paid sick leave by ER + Unpaid sick leave until end of quarantine | Days 1-5: Full salary continuation by employer Days 6+ Concurrent DBL/PFL benefits: Combined maximum of \$2,884.62/week |
| 11 - 99 | Yes | Duration of quarantine <i>until Federal program starts</i> | At least 5 days paid sick leave paid by ER + Unpaid sick leave until end of quarantine | Days 1-5: Full salary continuation by employer Days 6+ Concurrent DBL/PFL benefits: Combined maximum of \$2,884.62/week |
| 100+ | Yes | At least 14 days | Full duration paid at regular salary by ER | Full salary continuation by employer |
| Public Employers | Yes | At least 14 days | Full duration paid at regular salary by ER | Full salary continuation by employer |

State Legislation in Response to COVID-19

New York Emergency COVID-19 Paid Sick Leave

DBL/PFL time taken under the Emergency COVID-19 Paid Sick Leave act count as time taken under State disability (maximum of 26 weeks per year), and Paid Family Leave (maximum of 10 weeks in 2020) and reduces the remaining benefit duration accordingly.

The combined maximum of \$2,884.62/week consists of a portion of Paid Family Leave and a portion of DBL. Both benefits run concurrently:

- The first 60% of the weekly salary is paid through the Paid Family Leave benefit bucket, to a maximum of \$840.70/week.
- The amount of the DBL benefit depends on the employee's weekly salary – it's the difference between the salary less the PFL portion of the benefit. The DBL portion is capped at \$2,043.92/week.

| Employee Name | Weekly salary | PFL benefit portion (60% of weekly salary, capped at \$840.70) | DBL is the Weekly salary minus PFL amount (capped at \$2,043.92) | Total Benefit amount/week |
|---------------|---------------|--|--|------------------------------|
| Jane | \$1,000.00 | \$600.00 | \$400.00 | \$1,000.00 |
| Jamal | \$2,000.00 | \$840.70 | \$1,159.30 | \$2,000.00 |
| Anne | \$3,000.00 | \$840.70 | \$2,043.92 | \$2,884.62 |

State Legislation in Response to COVID-19

New York Emergency COVID-19 Paid Sick Leave

- The 7-day waiting period under DBL is waived. Benefits start on the employee's first full day of unpaid quarantine:
- For employees at a small business with less than 10 employees/less than \$1m in annual net income:
 - Benefits will begin on the first day of the quarantine through their DBL/PFL insurance.
- For employees at a small business with less 10 employees and more than \$1m in annual net income:
 - Benefits are paid by the employer for the first 5 days before DBL/PFL benefits become payable which will cover the remaining quarantine time.
 - The same applies to businesses that have between 11 and 99 employees.
- Employers at organizations with 100+ employees and public employers are expected to continue an employee's full salary for the duration of the quarantine. These employees do not receive paid sick leave through DBL/PFL benefits under this act.



Additional Resources

COVID-19



Additional Resources - COVID-19

Additional Resources:

California: <https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

Colorado: <https://www.colorado.gov/pacific/cdle/colorado-health-emergency-leave-pay-%E2%80%9Ccolorado-help%E2%80%9D-rules>

D.C. <http://lims.dccouncil.us/Download/44469/B23-0718-SignedAct.pdf>

Nevada: <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/COVID-19-and-Paid-Leave.pdf>

New York: <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

Oregon: <https://www.oregon.gov/BOLI/WHD/OST/Pages/index.aspx>

Philadelphia: <http://regulations.phila-records.com/pdfs/03162020142718-0001.pdf>

San Francisco: <https://sfgov.org/olse/paid-sick-leave-ordinance-pslo>



Q&A

