



## Updates on Workers' Rights in the midst of COVID-19

### Can I take time off of work due to Coronavirus (or COVID-19) to self-isolate or take care of myself or my family?

Many workers in New York state are entitled to paid leave to care for themselves or a family member.

#### **New York City: Paid Sick & Safe Leave**

Most workers in NYC have the right to sick time. If you work in NYC for more than 80 hours a year, you can earn up to 40 hours of leave to care for yourself or anyone you consider family. You can start using your sick time 120 days after your first day of employment. You can use your time to stay home if you or a family member is sick, or to go to medical appointments. If your employer has five or more employees, you have a right to *paid* leave. If your employer has fewer than five employees, you have a right to *unpaid* leave.

Domestic workers in NYC who have worked (i) for the same employer for at least one year, and (ii) worked more than 80 hours in a year for that employer, are entitled to two paid days of sick leave each year.

Employees can use safe and sick leave to take time off of work when their employer's business closes due to a public health emergency or they need to care for a child whose school or child care provider closed due to a public health emergency.

Your employer cannot refuse to let you use sick time that you have earned, punish you for requesting or using earned sick time, or make you find a replacement worker before letting you use your sick time. Your employer cannot require medical documentation for using your sick time if you are taking three consecutive days off of work or less.

Workers are entitled to paid sick leave in NYC regardless of immigration status.

To learn more or to report a problem, call 311.

Only workers classified as "employees" have the right to paid sick days. But even if your employer calls you an independent contractor or pays you off-the-books, you may still be able to claim this benefit.

## **Westchester County: Earned Sick Leave Law**

Most workers in Westchester have the right to sick time. If you work in Westchester for more than 80 hours a year, you can earn up to 40 hours of leave to care for yourself or anyone you consider family. You can start using your sick time 90 days after your first day of employment (unless your employer allows you to use it sooner). Workers in Westchester began acquiring paid sick time under the law on July 10, 2019 (or on their first day of employment, if later). You can use your time to stay home if you or a family member is sick, or to go to medical appointments.

You can use your time to care for yourself or a family member when public health authorities determine that your or your family member's presence in the community could jeopardize the health of others because of your exposure to a communicable disease whether or not you have actually contracted the disease.

You can also use your time if your child's day care or elementary or secondary school is closed due to a public health emergency.

If your employer has five or more employees, you have a right to *paid* leave. If your employer has fewer than five employees, you have a right to *unpaid* leave.

Your employer cannot refuse to let you use sick time that you have earned, punish you for requesting or using your earned sick time, or make you find a replacement worker before letting you use your sick time. Your employer cannot require medical documentation for using your sick time if you are taking three consecutive days off of work or less.

Workers are entitled to paid sick leave in Westchester regardless of immigration status.

Only workers classified as "employees" have the right to paid sick days. But even if your employer calls you an independent contractor or pays you off-the-books, you may still be able to claim this benefit.

For more info see: <https://humanrights.westchestergov.com/resources/earned-sick-leave-law>

To report a problem, call the Department of Consumer Affairs at (914) 995-2155.

## **Long Island & Rest of State: New York State Paid Family Leave**

Some workers who need to take leave to care for a family member who is seriously ill with a mental or physical illness or condition that requires either hospital care or ongoing treatment

by a health provider may be entitled to New York State's Paid Family Leave (PFL). Paid Family Leave is a New York State program that provides employees with a percentage of their pay when they take time off work to care for a sick family member or a newborn. This law does not provide paid leave to an employee to recover from their own serious health condition. Ordinary illnesses, like the flu, a cold, an upset stomach, or an earache are not covered unless complications develop or hospital care is needed.

Most employees in the private sector, regardless of citizenship or immigration status, are entitled to paid time off to care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or parent) under New York state's paid family leave law. Eligible workers who work more than 20 hours per week can start receiving benefits six months after their start date. Those who work less than 20 hours per week need to work for 175 days to qualify.

In 2020, employees in NY can get 60% of their average weekly wage, up to a maximum of \$840.70, for up to 10 weeks. In 2021, workers will be able to get 67% of their average weekly wage for up to 12 weeks. The PFL law also protects workers' rights to return to the job after taking leave, protects them from retaliation for taking or asking for leave, and applies to all workers regardless of immigration status.

Workers must be currently employed to be covered.

Only workers classified as "employees" have the right to paid family leave. But even if your employer calls you an independent contractor or pays you off-the-books, you may still be able to claim this benefit.

For more information, visit <https://paidfamilyleave.ny.gov/> or call the Paid Family Leave Helpline at (844) 337-6303 Monday - Friday 8:30 a.m. - 4:30 p.m.

**My employer has reduced my hours, forced me to take unpaid leave, or ended my employment due to the Coronavirus. Is there anything I can do?**

Some workers who have employment authorization may file a claim for Unemployment Insurance benefits with the New York State Department of Labor. If an employer is closed due to COVID-19 or a quarantine order, employees may immediately apply for Unemployment Insurance. Unemployment Insurance provides temporary income for eligible workers who lose their jobs through no fault of their own. The Department of Labor decides if you qualify for benefits.

New York State is currently waiving the 7-Day waiting period for Unemployment Insurance benefits for people who are out of work due to Coronavirus closures or quarantines.

If you are undocumented, but you are authorized to work, you should be screened for eligibility. For example, DACA grantees are eligible for UI if they are currently authorized to work. If work permits expire or are rescinded, they would no longer be eligible.

You can apply online at [https://labor.ny.gov/ui/how\\_to\\_file\\_claim.shtm](https://labor.ny.gov/ui/how_to_file_claim.shtm) or by phone at (888) 209-8124 between 8 am - 5 pm Monday through Friday.

### **I lost my job as a result of COVID-19 and I have no other income to support my family. Is there any financial assistance available?**

#### **Workers Compensation**

Workers who are injured or become ill as a direct result of their work are entitled to workers' compensation insurance, which covers medical care related to the injury or illness and provides partial wage replacement for any missed work. Workers employed in a health care facility are likely eligible for workers' compensation if they contract COVID-19 on the job.

#### **Temporary Disability Insurance (TDI)**

Workers who suffer injuries or illnesses that did not arise out of or in the course of work may be entitled to Temporary Disability Insurance (TDI), a New York State program that provides weekly cash benefits to partially replace lost wages if you are unable to work. You may be eligible for TDI if you are a carrier of an illness, such as COVID-19, but do not show any symptoms. Disability benefits are covered through your employers disability benefits insurance carrier or your employer may be self-insured.

Cash benefits are 50 percent of your average weekly wage for the last eight weeks worked, up to a maximum of \$170 per week. Benefits are paid for a maximum of 26 weeks of disability during any 52 consecutive week period. You must be under the care of a doctor or other medical professional to qualify for TDI. You cannot collect disability benefits and paid family leave benefits at the same time. The total combined disability leave and paid family leave in any 52 week period may not exceed 26 weeks.

For more information, go to <http://www.wcb.ny.gov/content/main/offthejob/db-overview.jsp> or call (877) 632-4996 Monday through Friday 8:30 a.m. - 4:30 p.m.

## **Other wage replacements or emergency relief**

MRNY and other organizations across New York City and New York State are demanding that the City and State establish funds to support working families who suffer economic loss due to the Coronavirus, especially undocumented and other workers who are not eligible for unemployment insurance.

In some industries, community members and organizations have established special funds for additional support:

### **Restaurant/Hospitality Workers**

- **One Fair Wage Emergency Fund:** <https://ofwemergencyfund.org/>
- **ROC United Restaurant Disaster Relief Fund:**  
<https://rocunited.org/relief/application/>

### **Domestic Workers**

- **Coronavirus Care Fund:**  
<https://domesticworkers.org/coronavirus-care-fund>

### **Sex Workers**

- **Emergency Relief for Sex Workers In New York:**  
[https://www.gofundme.com/f/z6w8v5?utm\\_source=customer&utm\\_medium=copy\\_link&utm\\_campaign=p\\_cf+share-flow-1](https://www.gofundme.com/f/z6w8v5?utm_source=customer&utm_medium=copy_link&utm_campaign=p_cf+share-flow-1)

## **My workplace closed, but I had sick days or other PTO accrued. How do I make sure I am paid in full?**

Workers who are entitled to sick leave under local laws can use their sick leave when they are sick but are not entitled to be paid out unused leave when they leave their job, unless their collective bargaining agreement or other employment contract gives them that right.

Whether an employer must pay workers their unused vacation time, holiday pay, bonuses or other PTO upon separation depends on the terms of the employer's policy. If an employee has earned vacation time and the employer has no written forfeit policy (stating the worker gives up the right to vacation when they leave the job) then the employer must pay the employee for the accrued vacation time. If the employer never promised to provide workers with vacation or other wage supplements, they are not required by law to pay them. A worker can file a claim for unpaid wage supplements with the New York State Department of Labor.

### **My employer is making me come in and threatening to fire workers if we don't. What should I do?**

Workers who are sick or taking care of sick family members may be entitled to sick leave, see above. Workers who are fired for taking protected sick leave may be entitled to bring a claim for unlawful retaliation against their employers.

There is currently no legal protection that provides leave for workers who are not sick themselves but are fearful of contact with potentially sick co-workers or clients. You should consider talking with your coworkers about what types of safety gear or other protections you feel you need, and going together to ask your employer to make the changes you feel you need.

Employers are prohibited from firing, suspending, or otherwise retaliating against you for raising or reporting concerns about safety or health hazards. You can learn more about filing a complaint against your employer with the Occupational Health and Safety Administration (OSHA) here: <https://www.whistleblowers.gov/>.

### **I was offered a job that pays less than the minimum wage, in cash, and/or where I may be exposed to the Coronavirus, but I need the money. What should I do?**

This is a personal decision that only you can make, weighing the potential health and other risks against your family's needs.

### **Federal Families First Coronavirus Response Act**

The federal Families First Coronavirus Response Act amends the Family Medical Leave Act (FMLA) and paid sick leave provisions to provide additional leave for employees at workplaces with fewer than 500 employees. Employers of healthcare providers or emergency responders may elect to exclude their employees from these provisions.

#### **Expands FMLA for COVID-19**

(for employees who have been employed for at least 30 calendar days)

Employees who are unable to work (or telework) may take leave due to a need to care for the employee's minor child if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a "public health emergency." A public health emergency means an emergency with respect to COVID-19 declared by a federal, state, or local authority.

Employers may provide the first 10 days of this leave unpaid, during which an employee may substitute any accrued vacation, personal or medical/sick leave available. Subsequent absences must be paid at 2/3 the employee's regular rate of pay, with a maximum of \$200/day and \$10,000 total. Employers may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick leave available under the Act. The FMLA provisions require employees to provide the employer with "notice of leave as is practicable."

### **Paid Sick Leave for COVID-19**

Full-time employees for employers with fewer than 500 employees are immediately entitled to 80 hours of paid sick leave (or the equivalent of the average number of hours over two weeks for part time employees) for the following reasons:

And paid at the employee's regular rate, with a maximum of \$511/day and \$5,110 total:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

And paid at the employee's regular rate, with a maximum of \$200/ day and \$2,000 total:

- The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
- The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

The paid sick leave provisions state that after the first workday (or portion thereof) that an employee receives paid sick leave, an employer may require the employee to follow reasonable notice procedures in order to continue receiving the paid sick leave.

### **Job protection**

The Act provides some job protection. For employees at employers with 25 or more employees, the FMLA requires that an employee be restored to the same or equivalent position after leave. This requirement does not apply to an employer with fewer than 25 employees if the employee's

position no longer exists due to economic conditions or other changes in the employer's operations that affect employment and are caused by the public health crisis during the period of leave.

Employers must make reasonable efforts to restore the employee to the same or an equivalent position, and if the reasonable efforts fail, the employer must make efforts to contact the employee and reinstate the employee if an equivalent position becomes available within a one-year period beginning on the earlier of (a) the date on which the qualifying need related to a public health emergency concludes, or (b) the date that is 12 weeks after the date the employee's leave started.

**New York State just passed an Emergency Quarantine-Related Sick Leave that provides additional leave time for workers who are subject to a government-ordered quarantine or isolation.**

New York State Emergency Quarantine-Related Sick Leave emergency law will immediately provide *additional* sick leave to workers who are under a government-issued mandatory or precautionary order of quarantine or isolation due to COVID-19, unless a worker subject to quarantine is not sick and can continue to work during quarantine or isolation (such as by remote access). Workers who were quarantined as a result of certain non-work travel to certain countries are not eligible for this leave. All covered employees are protected against retaliation for using the law and are entitled under the law to return to their jobs following leave.

The emergency sick time and pay under this law for employees affected by COVID-19 who are subject to mandatory or precautionary orders of quarantine or isolation depends on the size of the employer:

**Employers with 10 or fewer employees and a net income less than \$1 million will provide their workers:**

- Job protection for the duration of the quarantine order
- Guaranteed access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.

**Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million will provide their workers:**

- At least 5 days of paid sick leave
- Job protection for the duration of the quarantine order
- Guaranteed access to Paid Family Leave and disability benefits (short-term disability) for the period of quarantine including wage replacement for their salaries up to \$150,000.



**Employers with 100 or more employees, as well as all public employers (regardless of number of employees), will provide their workers:**

- At least 14 days of paid sick leave
- Guaranteed job protection for the duration of the quarantine order

If you are quarantined but are working from home you do not qualify for these benefits.

Size of Private Employer	Sick Leave	Special Temporary Disability Insurance (TDI)	Special Paid Family Leave (PFL) Benefits
10 or fewer employees (with net annual income of less than \$1 million in last tax year)	<i>Unpaid</i> sick leave for duration of quarantine/isolation order	Can apply for special TDI benefits for duration of the quarantine/isolation	Can apply for special PFL benefits for duration of the quarantine/isolation
11 - 99 employees (and employers with 10 or fewer employees with net annual income of more than \$1 million)	5 days of <i>paid</i> sick leave, followed by <i>unpaid</i> sick leave for the remainder of the duration of the quarantine/isolation order	Can apply for special TDI benefits for duration of the quarantine/isolation	Can apply for special PFL benefits for duration of the quarantine/isolation
100 or more employees	14 days of <i>paid</i> sick leave during the quarantine/isolation order		

Eligibility for the special TDI and PFL benefits:

		Special Paid Family Leave (PFL) Benefits	Special Temporary Disability Insurance (TDI)
Workers subject to government-issued order of quarantine or isolation due to COVID-19 who cannot work as a result of the order	Eligible for <i>both</i> TDI and PFL benefits <i>simultaneously</i> , but workers who are eligible for emergency PSL must exhaust emergency PSL prior to using the TDI/PFL benefits	PFL benefits available at 100% of pay up to \$840.70/week maximum	For workers making more than \$840.70/week, TDI benefits will be available <i>on top of PFL benefits</i> at 100% of pay for the difference between TDI benefits and total pay, up to maximum of \$2,043.92/week* * No waiting period for TDI
Workers who need leave to provide care for a minor dependent child who is subject to a government-issued order of quarantine or isolation due to COVID-19	Eligible for emergency PFL benefits only	PFL benefits available at 100% of pay up to a maximum amount of \$840.70/week	
All qualifying workers who are currently covered for TDI and PFL, including self-employed workers who have opted in to coverage by purchasing a policy and are eligible for benefits	Eligible for special TDI and PFL benefits		

You may be eligible for additional leave under NYS Paid Family Leave and disability benefits.

For more information, call the coronavirus (COVID-19) Hotline at (888) 364-3065 or visit <https://www.governor.ny.gov/paid-sick-leave-covid-19-impacted-new-yorkers/emergency-covid-19-paid-sick-leave>.

### **If I have a disability, is my employer required to provide me with reasonable accommodations related to Coronavirus?**

Employers are prohibited from discriminating against workers on the basis of a disability. Workers who have a disability such as a compromised immune system may be entitled to a reasonable accommodation, such as telecommuting. Complications from coronavirus, such as pneumonia, may be considered a disability; you should speak to your employer about making changes to your work duties that would allow you to continue working, or take time off.

For more information, visit or call:

**New York City:** NYC Commission on Human Rights

**Westchester:** NYS Division of Human Rights

**Long Island & Rest of State:** NYS Division of Human Rights

### **If I have Coronavirus, can my employer tell others about my condition**

No. Your employer is prohibited from sharing your medical information and must keep it private and confidential.

### **Where can I find emergency meals or provisions?**

#### **New York City**

- NYC Food Bank Map & Info: <https://www.foodbanknyc.org/covid-19/>
- NYC Access - food pantries, child support, rent freeze program, IDNYC, etc: <https://a069-access.nyc.gov/accesshra/>

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