
GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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21-08

TO: ALL MEMBER FACILITIES

FROM: ROBIN C. ROSEN, ESQ., LABOR COUNSEL

DATE: FEBRUARY 5, 2021

RE: DEPARTMENT OF LABOR – NEW GUIDANCE ON THE USE OF
COVID-19 SICK LEAVE

The Department of Labor has issued new guidance on the use of NYS COVID-19 Sick Leave. As you know, the law provides both paid sick leave with access to expanded paid family leave and temporary disability depending on the size of the employer. As we notified you in the past, employees are eligible to take leave under this law for up to three (3) orders of quarantine or isolation. This guidance supplements prior guidance on the use of the paid leave. I have attached a copy of this guidance for your convenience.

Based on this new guidance, an employee who subsequently receives a positive diagnostic test for COVID-19 after already taking paid leave for a previous period of quarantine or isolation is entitled to a second (or third) 5 or 14 day paid leave. To be eligible for these additional days of paid leave, the employee must submit documentation from a licensed medical provider or testing facility attesting the employee has tested positive for COVID-19, however no medical documentation is needed if the employer gave the employee the test that showed the positive result.

Additionally, an employee who is subject to an order of quarantine or isolation but continues to test positive for COVID-19 after the end of such quarantine or isolation period shall be deemed to be subject to a second

mandatory order of isolation from the DOH and shall be entitled to a second (or third) 5 or 14 day paid leave. To be eligible for these additional days of paid leave, the employee must submit documentation from a licensed medical provider or testing facility attesting that the employee has received a positive diagnostic test for COVID-19 after completing the initial period of isolation, however no medical documentation is needed if the employer gave the employee the test that showed the positive result.

Further, under this guidance, if an employer mandates that an employee who is not otherwise subject to a mandatory or precautionary order of quarantine or isolation to remain out of work due to exposure or potential exposure to COVID-19, regardless of whether such exposure or potential exposure was in the workplace, the employer shall continue to pay the employee at the employee's regular rate of pay until such time as the employer permits the employee to return to work or the employee becomes subject to a mandatory or precautionary order of quarantine or isolation, at which time the employee would receive sick leave as required by NYS COVID-19 sick leave law, in accordance with this guidance, for the period of time the employee is subject to such mandatory or precautionary order of quarantine or isolation. Therefore, if an employer voluntarily chooses to take an employee off the schedule who is not mandated to quarantine or isolate, that employee must receive their regular wages during such time they are taken off the schedule. If that employee subsequently does become subject to a mandatory or precautionary quarantine or isolation, they then would be eligible for NYS COVID-19 paid leave in accordance with this guidance.

In no event shall an employee qualify for sick leave under NYS COVID-19 sick leave law for more than three (3) orders of quarantine or isolation. The second and third orders must be based on a positive COVID-19 test in accordance the above guidance.

Thank you.