Compliance Alert: New York Governor and Legislature Agreement on Paid Sick Leave Bill

Yesterday, New York Governor Andrew Cuomo announced that he had reached an agreement with the state legislature on a bill to provide enhanced job protection and sick leave benefits.

Sick Leave for Quarantined Workers Related to COVID-19

The legislation sets standards for employers based on the number of employees as of January 1, 2020, and requires employers to provide certain benefits to each employee who is unable to work due to a mandatory or precautionary order of quarantine or isolation due to COVID-19, issued by the state of New York, the department of health, a local board of health, or any governmental entity duly authorized to issue such an order. The following provisions will be effective immediately upon enactment:

- **Employers with ten or fewer employees**: each employee must be provided with unpaid sick leave until the termination of an order of quarantine or isolation due to COVID-19.
- **Employers with ten or fewer employees and net income greater than $1 million in the previous tax year**: each employee must be provided with at least five days of paid sick leave, followed by unpaid leave until the termination of an order of quarantine or isolation due to COVID-19.
- **Employers with 11-99 employees**: each employee must be provided with at least five days of paid sick leave, followed by unpaid leave until the termination of an order of quarantine or isolation due to COVID-19.
- **Employers with 100 or more employees**: each employee must be provided with at least fourteen days of paid sick leave.
- **Public employers**: each officer or employee must be provided with at least 14 days of paid sick leave, compensated at the individual’s regular rate of pay for the regular work hours during which the officer or employee is absent from work during the ordered period of quarantine or isolation, and without loss of the individual’s accrued sick leave.

Additionally, during any period described above for which an employee is subject to an order of quarantine or isolation due to COVID-19 and is entitled to unpaid leave, the employee will be eligible for NY state disability and family leave benefits. For this purpose, the bill allows disability benefits to be payable on the first day of disability, and allows concurrent payment of
disability and family leave benefits starting with the first full day of unpaid leave (up to a maximum of $840.70 in paid family leave benefits per week and $2,043.92 in disability benefits per week). The bill also includes job restoration requirements and clearly prohibits any discharge, threat, penalty, or other act of discrimination or retaliation against an employee due to taking sick leave.

The bill excludes from eligibility for paid sick leave or any other paid benefits any employee subject to an order of quarantine or isolation after returning to the United States from travel to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice, if the travel was not taken as part of the employee’s employment and the employee had notice of the travel health notice and limitations of the NY paid sick leave law prior to their travel. (Such an employee can still take employer-provided accrued leave or unpaid sick leave for the duration of the order of quarantine or isolation.) The benefits of the bill are also not available to employees who are asymptomatic or not yet diagnosed with any condition, and are physically able to work (through remote access or other means).

Finally, the bill’s provisions do not interfere with the rights of a public employee or employer under other applicable requirements (including collective bargaining agreements). If the federal government provides sick leave and/or benefits to employees related to COVID-19, the benefits described in the NY state bill will generally not be available. However, if the NY state paid sick leave, paid family leave, and/or disability programs are more generous than what is made available through any federal law provision, employees may claim the difference between the federal benefit and the NY state benefit.

**Accrued Sick Leave Benefits**

In addition to the provisions addressing the current COVID-19 pandemic, the bill also adds more general provisions to NY’s Labor Law requiring employers to provide minimum accrued sick leave to employees, as proposed by Governor Cuomo in his FY2021 budget. Under those requirements, the following minimum amounts of sick leave must be provided (beginning 180 days after enactment):

- **Employers with four or fewer employees**: each employee must be provided with up to 40 hours of *unpaid* sick leave per calendar year.
- **Employers with four or fewer employees and net income greater than $1 million in the previous tax year**: each employee must be provided with up to 40 hours of *paid* sick leave per calendar year.
• **Employers with 5-99 employees**: each employee must be provided with up to 40 hours of *paid* sick leave per calendar year.

• **Employers with 100 or more employees**: each employee must be provided with up to 56 hours of *paid* sick leave per calendar year.

Employees must accrue sick leave at a rate of not less than one hour per every 30 hours worked. This accrued sick leave must be available in increments that cannot exceed four hours, beginning on or after January 1, 2021. This earned sick leave can be used for medical care for an employee or their family member, as well as to obtain services or address matters related to domestic violence, a sexual offense, stalking, or human trafficking.

We will continue to monitor developments related to the COVID-19 pandemic and issue alerts to keep you informed. Please direct any questions you have to your Gallagher consultant.

*The intent of this summary is to provide general information. It should not be construed as legal advice and, as with any interpretation of law, employers should seek proper legal advice for application of these rules.*