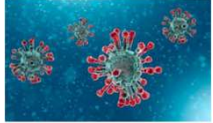



Coronavirus – Employer Resources




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**Some information provided by Attorney Scott Horton*



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Wage & Hour Issues

- Employers must maintain accurate time records for all non-exempt employees, even those working from home
- Still must pay overtime per laws and agreements
- Exempt salaried employees must be paid for any week in which they provide services
- Should continue to comply with meal period requirements



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Leave Laws

**Refer to handout*

- **Family and Medical Leave Act** – Provides eligible employees with 12 weeks of unpaid leave annually due to their own serious health condition or to care for a parent, spouse, or child with a serious health condition (among other qualifying conditions). Some states have similar laws, including New York's Paid Family Leave Act.
- **Paid Sick Leave** – Some states and localities had already enacted mandatory paid sick leave. Some have passed or proposed emergency paid sick leave specifically for COVID-19 related absences.
- **Disability Leave** – Under ADA and similar state laws, employees might be entitled to reasonable accommodations that could include time off from work without pay.




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Emergency Paid Sick Leave Act

**Refer to handout*

- Employers with less than 500 employees and government entities of any size
- All employees, but can exclude health care providers and emergency responders
- 80 hours of paid sick time to full-time employees if they are unable to work (including telework)
- Average hours over two weeks for part-time employees
- Employees taking leave to care for themselves paid at full regular rate of pay (max of \$511/day; \$5,110 total)
- Employees taking leave to care for another individual paid at 2/3 of their regular rate of pay (max of \$200/day; \$2,000 total)
- In addition to any other paid leave available to employees



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Emergency Paid Sick Leave Act

Qualifying Conditions

- Subject to federal, state, or local quarantine or isolation order related to COVID-19
- Advised by a health care provider to self-quarantine due to COVID-19 related concerns
- Experiencing symptoms of COVID-19 and seeking medical diagnosis
- Caring for an individual that is subject to quarantine or isolation order
- Caring for a son or daughter if their school has been closed or their childcare provider is unavailable
- Experiencing any other substantially similar condition specified by Sec. of Health and Human Services in consultation with the Sec. of Treasury and Sec. of Labor.



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Emergency FMLA Expansion Act

*Refer to handout

- Employers with less than 500 employees and government entities of any size
- Employees eligible if they've been employed for 30 days
- Up to 12 weeks of leave to care for minor child whose school is closed or who has lost childcare due to COVID-19 if unable to work/telework
- First 10 days are unpaid (but Emergency Paid Sick Leave would apply)
- Remaining 10 weeks paid at 2/3 regular rate of pay with a max of \$200/day (\$10,000 total)
- Possible exceptions for health care providers, emergency responders, and businesses with less than 50 employees (subject to DOL regulations)



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Payroll Tax Credits

- Employers receive payroll tax credit equal to 100% of wages paid to each employee for these new leaves
- No employer payroll taxes on these paid leave wages
- If credit exceeds amount owed, employers can receive refunds for excess



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Worker Adjustment & Retraining Notification (WARN) Act of 1988


- Requires New York State employers to give 90 days' notice of "plant" closing or mass layoffs
- This gives employees more time to prepare for layoff and increase chances of finding a new job
- It also enables the formation of Regional Rapid Response teams to help aid affected employees with job placement assistance, such as referrals, job fairs, resume preparation, job market information, and career advice and training options



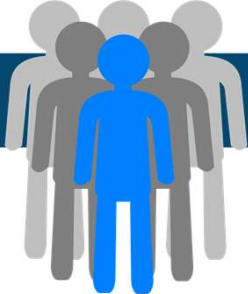
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The WARN Act applies if you have 50 or more employees and are contemplating...

- Closing a plant
- Moving locations
- Reducing employee hours
- Temporary layoffs
- Terminating many employees




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“Plant Closing”

An employment site is being shut down and will result in an employment loss for 25(New York) or more employees* during a 30-day period.

***excludes part-time employees**



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“Mass Layoff”

Reduction in workforce that results in an employment loss during any 30-day period for:

- 250 or more employees*; or
- 25-249 employees* if at least 33% of active workforce.

***excludes part-time employees**



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“Employment Loss”

- a) Employment termination, other than discharge for cause, voluntary departure, or retirement;
- b) Layoff longer than 6 months; or
- c) Reduction in hours of work of more than 50% during each month of any 6 month period.




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"Part-Time"

An employee who:

- a) is employed for an average of less than 20 hours per week; or
- b) who has been employed for fewer than 6 of the 12 months preceding the date on which notice is required.



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"Affected Employees"

Employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff.


*Includes part-time employees.



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Employers Must Give Notice to...


- "Affected Employees," including part-time
- Unions (if applicable)
- Government officials- Local Chief Elected Official
- State Rapid Response Dislocated Worker Unit



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Consequences of Violations


- Damages to each employee who should have received notice
- Up to 60 days' pay and benefits, plus attorneys' fees
- Civil penalty of \$500 per day of violation
- Employers might be able to chose a pay in lieu of notice approach



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WARN Act Exceptions

Unforeseeable Business Circumstances exception: applies to closings and layoffs caused by business circumstances that were **not reasonably foreseeable** when notice would otherwise have been required; **BUT** employers must still give as much notice as possible.




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Unemployment Options for Impacted Employees

**Refer to handout*

- Temporary layoffs and terminations due to reasons related to COVID-19 would qualify most affected employees for unemployment benefits
- Due to the increase volume in UI filings and inquiries, state unemployment offices have been implementing new practices and procedures.
- New York has increased its server capacity to decrease the disruptions caused by the increased volume and implemented a new alphabetical filing system
- New York and some other states have waived the 7-day waiting period for benefits for people who are out of work due to COVID-19 closures or quarantines
- Some federal enhancements may be available under FFCRA or future legislation



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Eligibility for Unemployment


**Refer to handout*

An employee who is subject to a reduction in hours or wages may be entitled to supplemental wages under NYS UI if the following conditions are met:

- Employee works less than four days per week
- Earns less than \$504 per week

A deduction of one-quarter of the eligible UI benefits will be deducted for each day that services are provided, even if no wages are earned and they only worked 1 hour during the day.

Employee must notify the DOL of any day worked or wages earned while receiving UI benefits. Failure to report this information could result in criminal penalties.




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Eligibility for Unemployment

Can an employee collect unemployment insurance while on Paid Family Leave?


No. When an employee is on Paid Family Leave (or vacation or any other paid leave), he or she is not entitled to unemployment insurance benefits because he or she is still employed (even if not required to perform work) and because he or she is not available for work.



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Helpful Employee & Employer Resources

Refer to handout




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