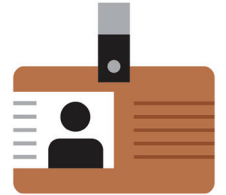




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FOR BNHRA MEMBERS
LABOR & EMPLOYMENT

MARCH 2021



COVID-19 Workplace Update for New York State Employers

As vaccinations and continued adherence to health and safety measures begin to speed the recovery from the COVID-19 pandemic, myriad legal changes affecting the workplace are also occurring. In New York State, Governor Andrew Cuomo just signed into law legislation providing employees with paid time off to receive a COVID-19 vaccination. The State's travel restrictions for some domestic travelers have also been eased and will be totally lifted as of April 1, 2021. In addition, the recently passed American Rescue Plan Act of 2021 (ARPA) extends the federal tax credits available for employers that voluntarily provide leave to employees for covered COVID-19 reasons under the Emergency Paid Sick Leave Act (EPSLA) and Emergency Family and Medical Leave Expansion Act (EFMLEA). New York State employers should be aware of these developments and their effect on the workplace and their employees.

NEW YORK STATE PAID VACCINATION LEAVE LAW

On March 12, 2021, Governor Cuomo signed into law legislation amending the New York Labor Law and Civil Service Law, and granting paid leave to all private and public employees to receive COVID-19 vaccinations. The law provides employees with up to four hours of paid time off per COVID-19 vaccine injection, unless the employee is entitled to a greater number of hours under a collective bargaining agreement or as otherwise authorized by the employer. Covered leave must be paid at the employee's regular rate of pay and cannot be charged against any other leave the employee is otherwise entitled to, including paid leave under a collective bargaining agreement, New York Labor Law § 196-b or any other law. The law also prohibits discrimination and retaliation against an employee for requesting or using leave under the law. The law took effect immediately upon the

Governor signing it and, by its terms, will expire on December 31, 2022. (Employers may wish to consider providing voluntary leave under the EPSLA and EFMLEA for COVID-19 vaccinations, where applicable as discussed below, so they may obtain a federal tax credit for any paid vaccination leave.)

DOMESTIC TRAVEL RESTRICTIONS RELAXED FOR VACCINATED AND PREVIOUSLY INFECTED INDIVIDUALS

On March 10, 2021, the New York State Department of Health (DOH) issued [updated interim guidance](#) consistent with recently revised Centers for Disease Control and Prevention guidance. The latest guidance exempts from quarantine requirements certain domestic travelers entering New York from non-contiguous states who are vaccinated against COVID-19 or have been previously infected with COVID-19 (travelers from contiguous states are already exempt from the quarantine requirements). The updated DOH guidance provides that asymptomatic individuals who have been vaccinated against COVID-19 do not need to quarantine during the first 3 months after full vaccination if they:

- Are fully vaccinated (i.e., ≥ 2 weeks following receipt of the second dose in a 2-dose series, or ≥ 2 weeks following receipt of one dose of a single-dose vaccine);
- Are within 3 months following receipt of the last dose in the series; and
- Have remained asymptomatic since their last COVID-19 exposure.

Asymptomatic individuals, who have previously been diagnosed with laboratory confirmed COVID-19 and have since recovered, are not required to retest and quarantine within 3 months after the date of symptom



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onset from the initial COVID-19 infection or date of first positive diagnostic test if asymptomatic during illness.

DOMESTIC TRAVEL RESTRICTIONS TO BE LIFTED ON APRIL 1, 2021

On March 11, 2021, Governor Andrew Cuomo announced that effective April 1, 2021, domestic travelers will no longer be required to quarantine after entering New York from another U.S. state or territory. However, the DOH has not yet issued official guidance to this effect. Although quarantine after domestic travel will no longer be required after April 1, 2021, the DOH still recommends that domestic travelers entering New York State continue to do so as an added precaution. Mandatory quarantine for international travelers will remain in effect. All travelers will still be required to complete the [Traveler Health Form](#) and, regardless of quarantine status, all individuals exposed to COVID-19 or returning from travel will still be required to:

- Continue daily symptom monitoring through Day 14;
- Continue strict adherence to all recommended non-pharmaceutical interventions, including hand hygiene and the use of face coverings, through Day 14 (even if fully vaccinated); and
- Immediately self-isolate if any symptoms develop, and contact the local public health authority or their health care provider to report this change in clinical status and determine if they should seek testing.

EPSLA AND EFMLEA TAX CREDITS

As [previously reported](#), employer leave obligations under the EPSLA and EFMLEA for COVID-19-related reasons expired on December 31, 2020. The Consolidated Appropriations Act of 2021 extended the tax credits only, not the requirement to provide leave, for covered employers (those with fewer than 500 employees) that voluntarily continue to provide leave under the EPSLA and EFMLEA until March 31, 2021. The ARPA has now

extended those tax credits for leaves provided under both laws until September 30, 2021.

In addition to extending the period for which tax credits can be claimed, the ARPA expands the covered leave reasons and the allotments of time that can qualify for tax credits under the EPSLA and EFMLEA. The expanded reasons for which leave can be used under both laws now include:

- To obtain a COVID-19 vaccine;
- To recover from an injury, disability, illness or condition related to getting a COVID-19 vaccination; and
- To seek or await the results of a COVID-19 test after being exposed to COVID-19, or when asked by an employer to get a COVID-19 test.

Unlike the New York State paid vaccination leave law, there is no time limit under the EPSLA or EFMLEA for obtaining a vaccination.

The ARPA also expands the reasons that qualify as paid family leave under the EFMLEA to include all of the reasons for which paid sick leave can be used under the EPSLA, which include:

1. Where an employee is subject to a quarantine or isolation order;
2. Where an employee has been advised by a health care provider to self-quarantine due to COVID-19;
3. Where an employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. Where an employee is caring for an individual who is subject to an order of quarantine or isolation, or has been advised to self-quarantine; and
5. Where an employee is caring for a son or daughter whose school or place of care has been closed due to COVID-19.

Employers can take a 100% tax credit for up to 10 days of paid sick leave (up to \$200 or \$511 per day depending on the reason for leave) for employees taking leave starting



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on April 1, 2021, even if the employees have previously exhausted their first allotment of 10 paid sick leave days. Employers can take a 100% tax credit for paid family leave (up to \$200 per day and \$12,000 total), and the first two weeks of family leave can now be paid, instead of unpaid, and qualify for the tax credit.

The ARPA also includes a nondiscrimination provision, which disqualifies employers from receiving any tax credits if they limit any voluntarily provided paid sick

leave or family leave to highly compensated employees, full-time employees or employees with a certain amount of tenure.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney with whom you have a relationship](#). ■



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