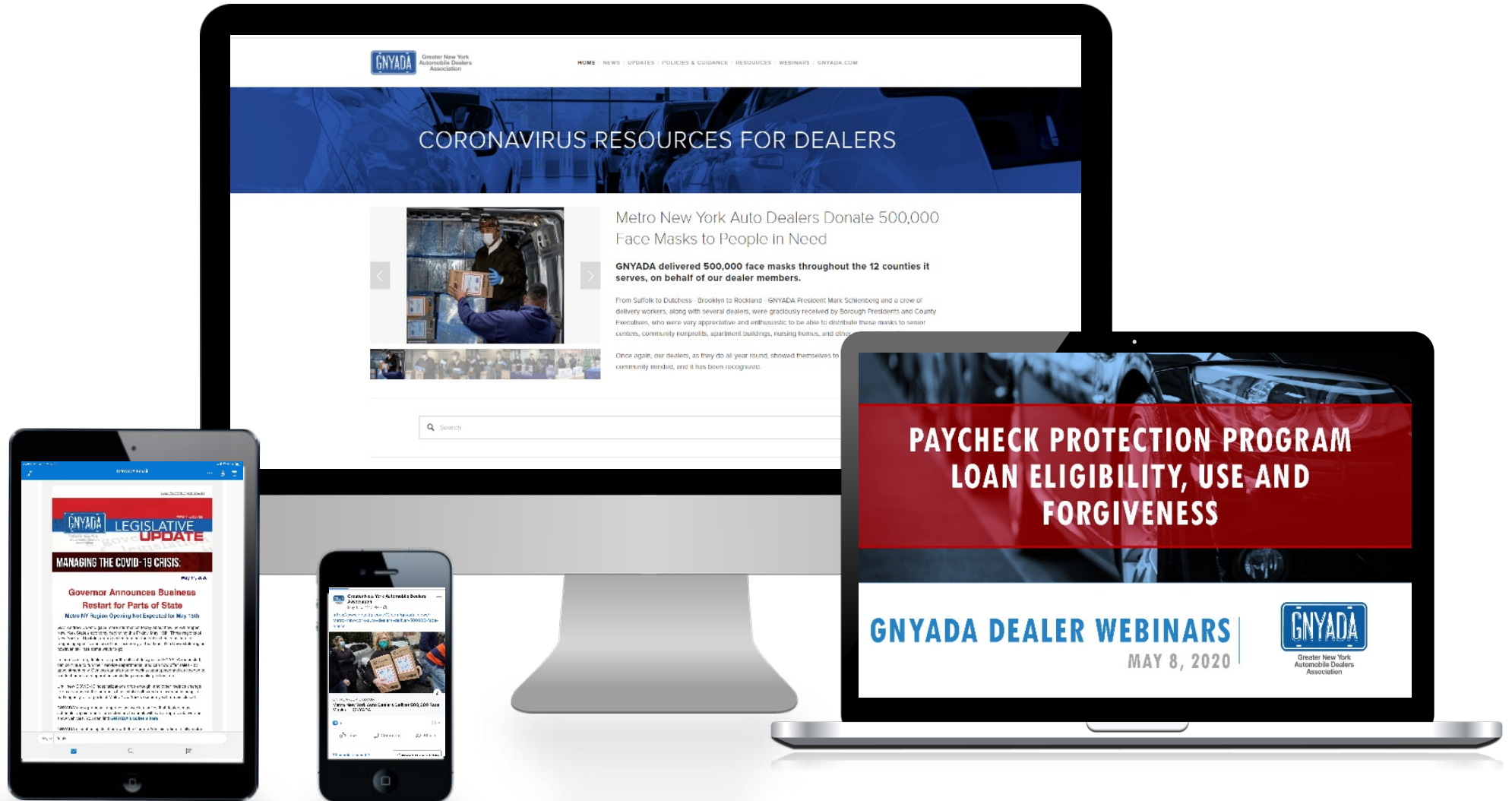




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Automobile Dealers
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Bond

HERO Act Update

September 14, 2021



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NYS HERO ACT

Protecting New York Workers from Airborne Diseases

The New York Health and Essential Rights Act (NY HERO Act) was signed into law on May 5, 2021. The law mandates extensive new workplace health and safety protections in response to the COVID-19 pandemic. The purpose of the NY HERO Act is to protect employees against exposure and disease during a future airborne infectious disease outbreak.

On September 6, 2021, Governor Kathy Hochul announced the designation of COVID-19 as an airborne infectious disease under the HERO Act. This designation requires all employers to implement workplace safety plans.

Under this new law, the New York State Department of Labor (NYS DOL), in consultation with the NYS Department of Health, has developed a new Airborne Infectious Disease Exposure Prevention Standard, a Model Airborne Infectious Disease Exposure Prevention Plan, and various industry-specific model plans for the prevention of airborne infectious disease. Employers can choose to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements.

The airborne infectious disease exposure prevention plans must go into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

The standard and model plans are available in English and will be available in Spanish in the coming days. Employers are required to provide a copy of the adopted airborne infectious disease exposure prevention plan and post the same in a visible and prominent location within each worksite. Templates and resources are available below.

DOL will be sharing more details about this law in the near future. Please check this website for updates.

Recap -- NY HERO Act

- Airborne Infectious Disease Exposure Prevention Plans (NYLL § 218-b)
 - Effective July 4, 2021
 - All private employers, no matter the size
 - **Focus of today's discussion**
- Workplace Safety Committees (NYLL § 27-D)
- Effective November 1, 2021
 - Private employers with at least 10 employees

Who is covered?

- Who does this apply to?
 - Only applies to **private** employers with worksites in NYS
 - Covers a broad range of workers (not just employees)
 - Only applies to an “airborne infectious agent or disease” designated by the Commissioner of Health as highly contagious communicable disease that presents serious risk of harm to public health
- Standard is clear that this **does not apply to** any seasonal or endemic infectious agent or disease (like the seasonal flu)

NYSDOL Published Model Plans & Standard

- Airborne Infectious Disease Exposure Prevention Standard
 - Minimum standard/requirements
- General Model Airborne Infectious Disease Exposure Prevention Plan
- Industry Specific Model Airborne Infectious Disease Exposure Prevention Plans (available on NYDOL HERO Act website)
 - Suggest that dealers use the Retail template
(<https://dol.ny.gov/system/files/documents/2021/07/retail-exposure-prevention-plan-p765k.pdf>)

Specific Topics To Be Included in Every Plan

Requirements on procedures and methods for:

- a) Face coverings
- b) Employee health screenings
- c) Required PPE
- d) Social distancing
- e) Accessible workplace hand hygiene stations (including adequate break times for handwashing)
- f) Regular cleaning and disinfecting of equipment, frequently touched surfaces, restrooms, breakrooms/dining areas, etc. (“high-risk areas”/“frequently touched surfaces”)
- g) Compliance with mandatory/precautionary orders of quarantine/isolation
- h) Compliance with applicable engineering controls (proper air flow, exhaust ventilation)
- i) Designation of one or more supervisory employee(s) to enforce compliance with prevention plan
- j) Compliance with applicable rules, laws, regulations, standards, guidance regarding notification to employees and relevant state/local agencies regarding potential exposure at worksite
- k) Training: Verbal review of standard, employer policies, and employee rights under this section of the HERO Act. This training is not required for individuals working for staffing agencies, contractors, subcontractors.

Critical Compliance Deadlines

- **Adoption of Plan**

- Statute: By **August 5, 2021**, dealers should have adopted either a model prevention plan or an alternative plan that meets/exceeds minimum standard
- Special rules apply is creating an “alternative plan”
 - Agreement with collective bargaining representative, **or**
 - “Meaningful participation from employees”
 - Tailored and specific to hazards in specific industry and worksites

- **Training/Verbal Review**

- Statute & Guidance: Employers must conduct a “verbal review” of policies, employee statutory rights, and the prevention plan
 - During outbreak of airborne infectious disease
 - Before designated/declared outbreak???

Additional Requirements

- **Written Notice / Posting**

- Statute: Employers must provide copy of the adopted plan to all employees in primary language within 30 days of adoption, or by **September 4, 2021**
- Post plan in visible and prominent location in each worksite – employee bulletin board
- Employee Handbook

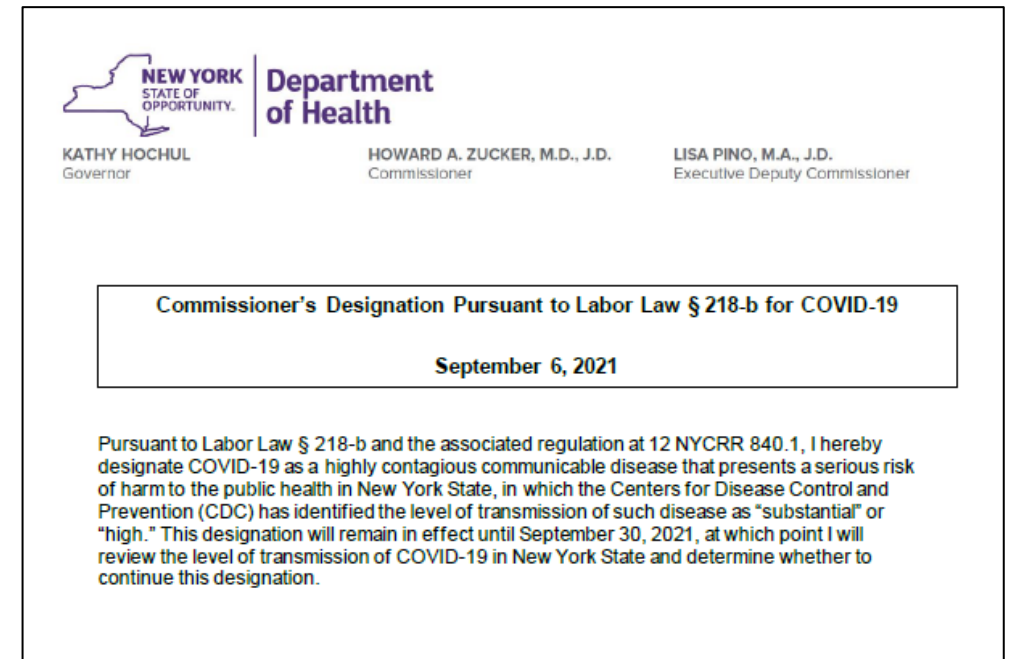
- **Training**

- Guidance: Required each time the plan is “activated”

Designation by Commissioner of Health

- September 6, 2021 – Commissioner of Health designated COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health.”

ACTIVATE PLAN!



Implementation of Exposure Prevention Plans

Standard:

- When designation is made by the Commissioner of Health (which happened on September 6th this year) each employer shall:
 - Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern
 - Finalize and promptly activate the worksite exposure prevention plan;
 - Provide the verbal review/training;
 - Provide each employee with a copy (via email or printed) of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available from the DOL; and
 - Post a copy of the exposure prevention plan in a visible and prominent location at the worksite (except when the worksite is a vehicle); and

Implementation of Exposure Prevention Plans

Standard:

- While the designation is in effect:
 - Assign enforcement responsibilities and ensure that enforcement takes place;
 - Monitor and maintain exposure controls;
 - Follow updates to guidance;
 - Designate one or more supervisory employees whose name(s) and contact information will be listed in the plan) to enforce compliance with the plan. *Must be a supervisory employee

Next Steps – Breaking it down

- Review Your Plan – Update as Necessary
 - Familiarize yourself with the exposure controls you need to have in place and consider what exposure controls you can/should have in place (face masks, plexiglass separators, sanitizer, cleaning)
 - Be prepared to change or update plan to reflect current guidance from NYSDOH and/or CDC
- Finalize and Activate!
- Provide verbal review/training to all employees
- Distribute updated copies/plans to employees, posted, etc.

Verbal Review/Training

- **Standard:** “The employer ***shall*** conduct a verbal review of employer policies, employee rights under [the Standard] and section 218-b of the labor law, and the employer’s exposure prevention plan set forth herein...”

Verbal Review/Training

Retail Model Plan: When this plan is activated, all staff (personnel) will receive training (which will cover) on all elements of this plan and the following topics:

1. The infectious agent and the disease(s) it can cause;
2. The signs and symptoms of the disease;
3. How the disease can be spread;
4. An explanation of this Exposure Prevention Plan;
5. The activities and locations at our worksite that may involve exposure to the infectious agent;
6. The use and limitations of exposure controls
7. A review of the standard, including employee rights provided under Labor Law, Section 218-B.”

“The training will be:

1. Provided at no cost to employees and take place during working hours. If training during normal work hours is not possible, employees will be compensated for the training time (with pay or time off);
2. Appropriate in content and vocabulary to your educational level, literacy, and preferred language; and
3. Verbally provided in person or through telephonic, electronic, or other means.”

Permissible Verbal Review/Training Examples

- Pre-recorded training session
 - Zoom/video meeting
 - Pre-shift meeting
 - In-person meeting
-
- Who should conduct this training? Designated Supervisory Employees.

NY HERO Act - FAQs

- Quick Recap:

- NY HERO Act passed in May 2021

Two Parts:

1. NYLL 218-b – occupational exposure to airborne infectious disease (effective July 4, 2021)

Focus for today

2. NYLL 27-D – workplace safety committees (effective November 1, 2021)

Key Dates

- **July 6, 2021**, → NYS Department of Labor publishes Standard and Model Plans
- **August 5, 2021** → Adopt Airborne Infectious Disease Exposure Prevention Plan
- **September 4, 2021** → Distribute written copy to employees, post, verbal review, etc.
- **September 6, 2021** → NYS Commissioner of Health designates COVID-19 to be “highly contagious communicable disease that poses serious risk to public health” → **ACTIVATE PLANS**
- **September 9, 2021** → NYS Department of Labor publishes new guidance

Action Items

When designation is made, employers must:

- Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern
- Finalize and promptly activate the worksite exposure prevention plan;
- Provide the verbal review;
- Provide each employee with a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available, and
- Post a copy of the exposure prevention plan in a visible and prominent location at the worksite (except when the worksite is a vehicle); and
- Ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts.

Action Items

- While the designation is in effect:
 - Assign enforcement responsibilities and ensure that enforcement takes place;
 - Monitor and maintain exposure controls;
 - Follow updates to guidance;
 - Designate one or more supervisory employees to enforce compliance with the plan. *Must be a supervisory employee

Verbal Review

- Model plan seems to use the term interchangeably with “training”
 - Follow model plan if you adopted the model plan
 - Existence of plan, location of plan, circumstances it can be activated, the Standard, employer policies, & employee rights
- Must cover all elements of the plan
 - The infectious agent and the disease(s) it can cause
 - The signs and symptoms of the disease
 - How the disease can be spread
 - Explanation of Plan
 - Activities/locations at worksite that may involve exposure
 - Use and limitations of exposure controls
 - Review of Standard, employee rights

FAQs

- When do we need to activate our plans by?
 - No clear “compliance date”, but must be activated “promptly”

FAQs

- Does it matter how many employees my business has?
 - No
 - Exception for owner who has no other employees
- When do we have to conduct “verbal review”?
 - New guidance suggests both *before* and *after* designation is made
- What constitutes “verbal review”?
 - Depends on what is in your plan; model plan outlines “training”

FAQs

- What about independent contractors? Does my plan apply to them?
 - Yes, it covers independent contractors and other workers who are engaged in your workplace.
 - Certain aspects of the Plan apply; must provide them with a copy of plan, ensure they are following, etc.
 - Training does not apply to independent contractors.

FAQs

- Do we have to do health screenings again, and what do those look like?
 - Yes, the Standard seems clear that employers must conduct health screening before start of workday
 - Excluding employees from the workplace who may have COVID-19
- What about customers, guests, students, other non-employees? Does this plan apply to them?
 - Plan and Standard applies to “employees” as defined in the law
 - Consider whether to implement policies under administrative controls sections to further purpose of law

FAQs

- Do I have to put a copy of the plan in my employee handbook?
 - Yes

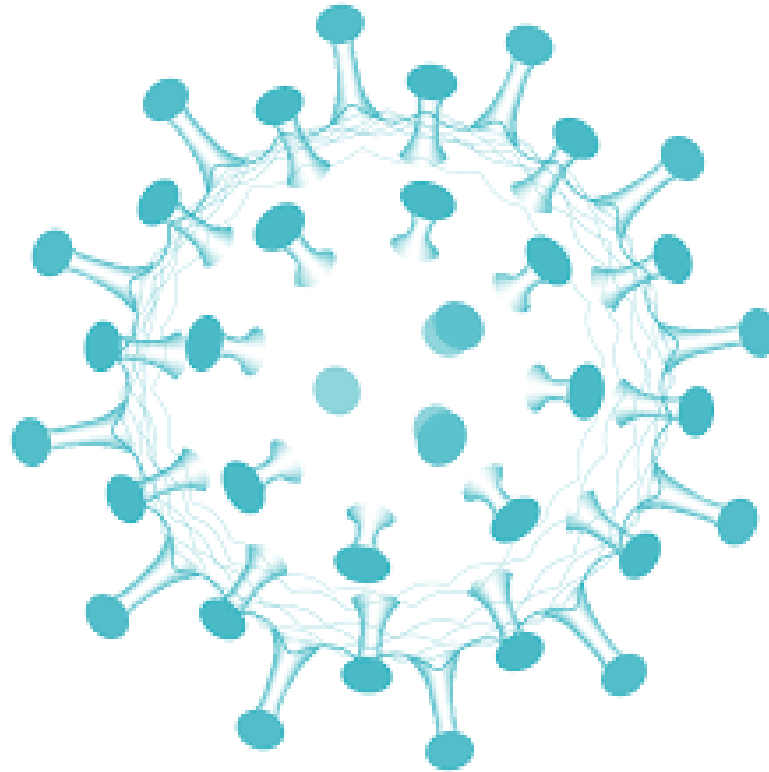
FAQs

- What if I don't adopt a model plan, can I adopt an alternative plan?
 - Yes, but must meet additional criteria:
 - Tailored and specific to hazards in the industry and worksite
 - “Meaningful participation from employees”
 - Agreement with collective bargaining representative
- What will constitute an “alternative plan”?
 - New guidance suggests that making substantial changes beyond the open fields may lead to finding of “alternative plan”

FAQs

- What will “constitute meaningful participation from employees”?
 - New guidance suggests that this may entail allowing employees opportunity to “review and comment”

COVID-19 LEAVES UPDATE



COVID-19 SICK LEAVES AVAILABLE

- ✓ Federal COVID-19 Sick Leave
- ✓ New York COVID-19 Paid Sick Leave
- ✓ New York Paid Sick Leave
- ✓ New York City Paid Safe and Sick Leave Law
- ✓ Westchester Earned Sick Leave Law
- ✓ New York Paid Leave for COVID-19 Vaccinations

FEDERAL COVID-19 SICK LEAVE – FFCRA EXPIRED

The Families First Coronavirus Response Act (“FFCRA”) required certain employers with fewer than 500 employees to provide up to **80 hours** of emergency paid sick leave and up to **12 weeks** of expanded family and medical leave to employees for certain situations related to COVID-19.

- Employee is subject to a mandatory or precautionary order of quarantine/isolation;
- Employee has been advised by a health care provider to self-quarantine;
- Employee is experiencing symptoms and is seeking a medical diagnosis;
- Employee is caring for an individual subject to an order of quarantine/isolation;
- Employee is caring for child whose school or place of care has closed due to COVID-19;
- Employee is experiencing other substantially similar condition.
- Employee is unable to work because of need to care for a child whose school or childcare provider is closed or unavailable due to COVID-19-related reason.

Mandate expired December 31, 2020

FEDERAL COVID-19 SICK LEAVE – ARPA EXPIRING SOON

American Rescue Plan Act (“ARPA”) extended and expanded some provisions of FFCRA.

- Employers may *voluntarily* continue to provide emergency paid sick leave and expanded paid family and medical leave through **September 30, 2021**.
- Employers can take payroll tax credits for providing the leave.
- Prior limits on paid leave *reset* as of April 1, 2021.
- Expanded reasons for which an employer may provide EFMLA.
 1. Employee is seeking or awaiting the results of a diagnostic test or a medical diagnosis of COVID-19;
 2. Employee is getting a COVID-19 vaccine; or
 3. Employee is recovering from any injury, disability, illness or condition related to receiving the COVID-19 vaccine.

FEDERAL COVID-19 SICK LEAVE – FMLA

Under the Family and Medical Leave Act (“FMLA”), covered employers must provide employees with job-protected, *unpaid* leave for specified family and medical reasons. Employers are covered if more than 50 employees in any 20 workweeks.

- Employees are eligible if worked for employer for at least 12 months, and have at least 1,250 hours of service over the 12 months prior to leave.
- Eligible employees may take up to 12 weeks of leave in a 12-month period.
- May apply to employees out with COVID-19 or caring for family members.

NEW YORK COVID-19 SICK LEAVE

New York Emergency **Paid Sick** Leave

- Employee must be subject to a mandatory or precautionary order of quarantine/isolation.

New York Emergency **Paid Family** Leave

- Employee must be subject to a mandatory or precautionary order of quarantine/isolation; or
- Employee's child is subject to a mandatory or precautionary order of quarantine/isolation.

*** Excludes sick leave due to voluntary travel**

NEW YORK COVID-19 SICK LEAVE

NY Emergency **Paid Sick** Leave:

Employers with 100 or more employees must provide:

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

Employers with 11-99 employees must provide:

- 5 days of paid sick leave.
- Compensation for the remainder of their quarantine through existing PFL and DB policy up to \$2,884.62 per week

NEW YORK COVID-19 SICK LEAVE

NY Emergency **Paid Family** Leave

Available after NY emergency paid sick leave exhausted

- Up to a maximum of 67% of the employee's average weekly wage, or up to \$971.61 per week
 - Average weekly wage = average gross amount received in the past 8 weeks. Includes all remuneration, including commissions, bonus, overtime wages.
- Provides up to 12 weeks of job-protected *paid* family leave benefits

NEW YORK COVID-19 SICK LEAVE - UPDATE

Guidance issued January 20, 2021:

- Employees who continue to test positive after the end of quarantine or isolation will be allowed to take a second round of paid COVID-19 sick leave.
- Employees who receive a positive COVID-19 result after completing a mandatory quarantine or isolation, will be entitled to another round of paid COVID-19 sick leave.
- Employees who test positive for COVID-19 may receive up to **3 rounds** of paid COVID-19 sick leave, provided documentation confirming positive test is provided.

UPDATED SCENARIOS FOR COVID-19 RELATED LEAVES

	Employer PTO/Sick Leave	NYS COVID-19 Emergency Sick Leave	NYS COVID-19 Emergency PFL or DB	FFCRA Paid Sick Leave*	FFCRA Expanded FMLA*	NYS Regular PFL	NYS Paid Sick Leave	NYS Unemployment Insurance
Employee ordered to quarantine or isolate by governmental entity	✓	✓	✓	✓	■	X	✓	✓
Employee advised to quarantine or isolate by health care provider only	✓	X	X	✓	■	X	✓	✓
Employee is experiencing symptoms of COVID and seeking medical diagnosis	✓	X	X	✓	■	X	✓	✓
Employee unable to work because child's school or daycare closed due to COVID-19	✓	X	X	✓	■	X	X	✓
Employee unable to work because caring for sick family member diagnosed with COVID-19 and subject to an order of quarantine or isolation or advised to self-quarantine	✓	X	✓	✓	■	✓	✓	✓

* Only available on voluntary basis - expiring Sept. 30, 2021 ✓ = may be available X = not available

UPDATED SCENARIOS FOR COVID-19 RELATED LEAVES

	Employer PTO/Sick Leave	NYS COVID-19 Emergency Sick Leave	NYS COVID-19 Emergency PFL or DB	FFCRA Paid Sick Leave*	FFCRA Expanded FMLA*	NYS Regular PFL	NYS Sick Leave	NYS Unemployment Insurance
Employee unable to work because caring for another individual who is subject to an order of quarantine or isolation or advised to self-quarantine	✓	X	X	✓	✓	X	X	✓ (Only if the individual is a member of the household)
Employee unable to work due to employer voluntary closing	✓	X	X	X	X	X	X	✓
Employee unable to work due to employer closing by order of state or federal government or authorized entity for COVID-19	✓	X	X	X	X	X	X	✓
Employee laid off due to business slow down or lack of demand due to COVID-19	X	X	X	X	X	X	X	✓

* Only available on voluntary basis – expiring Sept. 30, 2021 ✓ = may be available X = not available

UPDATED SCENARIOS FOR COVID-19 RELATED LEAVES

	Employer PTO/Sick Leave	NYS COVID-19 Emergency Sick Leave	NYS COVID-19 Emergency PFL or DB	FFCRA Paid Sick Leave*	FFCRA Expanded FMLA*	NYS Regular PFL	NYS Sick Leave	NYS Unemployment Insurance
Employee furloughed due to business slow down or lack of demand due to COVID-19	✓	X	X	X	X	X	X	✓
Employee reduction of work hours due to business slow down or lack of demand due to COVID-19	✓	X	X	X	X	X	X	✓ (Only if work less than 4 days/week and less than \$504 /week)
Employee refuses to work when employer stays open despite public health urging (but not order) to close	✓	X	X	X	X	X	X	X
Employee refuses to work due to self-imposed decision to engage in social distancing and avoid workplace	✓	X	X	X	X	X	X	X

* Only available on voluntary basis – expiring Sept. 30, 2021

✓ = may be available X = not available

UPDATED SCENARIOS FOR COVID-19 RELATED LEAVES

	Employer PTO/Sick Leave	NYS COVID-19 Emergency Sick Leave	NYS COVID-19 Emergency PFL or DB	FFCRA Paid Sick Leave*	FFCRA Expanded FMLA*	NYS Regular PFL	NYS Sick Leave	NYS Unemployment Insurance
Employee is immune-compromised and advised by health care provider to quarantine or self-isolate	✓	X	X	✓	X	X	✓	✓
Employee quits job because employer will not allow work from home	X	X	X	X	X	X	X	✓
Employee required to quarantine due to voluntary travel outside contiguous states or level 2 or greater country	✓	X	X	✓	X	X	X	X

* Only available on voluntary basis – expiring Sept. 30, 2021

✓ = may be available

X = not available

UPDATED SCENARIOS FOR COVID-19 RELATED LEAVES

	Employer PTO/Sick Leave	NYS COVID-19 Emergency Sick Leave	NYS COVID-19 Emergency PFL or DB	FFCRA Paid Sick Leave*	FFCRA Expanded FMLA*	NYS Regular PFL	NYS Sick Leave	NYS Unemployment Insurance	NYS Paid Leave for COVID-19 Vaccine
Employee takes time off to get COVID-19 vaccine.	X	X	X	X	X	X	X	X	✓
Employee has side effects from COVID-19 vaccine.	✓	X	X	✓	✓	X	✓	X	X
Employee refuses to get vaccinated or comply with weekly testing mandate.	X	X	X	X	X	X	X	X	X

* Only available on voluntary basis – expiring Sept. 30, 2021

NY STATE (NON-COVID) PAID SICK LEAVE

Applies to all employers

- Employers with 5-99 employees must provide up to 40 hours of **paid** sick leave per year.
- Employers with 100 or more employees must provide up to 56 hours of **paid** sick leave per year.

Eligibility for taking leave:

- Employee or family member's physical illness, injury or health condition;
- Diagnosis, care or treatment of an employee or family member; or
- Absence because employee or family member is a victim of domestic violence, a family offense, sexual offense, stalking or human trafficking, and obtaining services, getting to safety, meeting with an attorney, filing a complaint, enrolling children in new school, or similar actions.
- **Recovery from COVID-19 vaccination.**

* New York State Paid Sick Leave governs paid sick leave in Westchester County.

NYC (NON-COVID) PAID SAFE AND SICK LEAVE LAW

Applies to all employers

- Employers with 5-99 employees must provide up to 40 hours of **paid** sick leave per year.
- Employers with 100 or more employees must provide up to 56 hours of **paid** sick leave per year.

Eligibility for taking leave:

- Employee or family member's physical illness, injury or health condition;
- Diagnosis, care or treatment of an employee or family member; or
- Closure of employee's place of business by order of a public official, or employee's need to care for a child whose school or childcare provider is closed due to a public health emergency; or
- Absence because employee or family member is a victim of domestic violence, a family offense, sexual offense, stalking or human trafficking.

NYC (NON-COVID) PAID SAFE AND SICK LEAVE LAW

Documentation

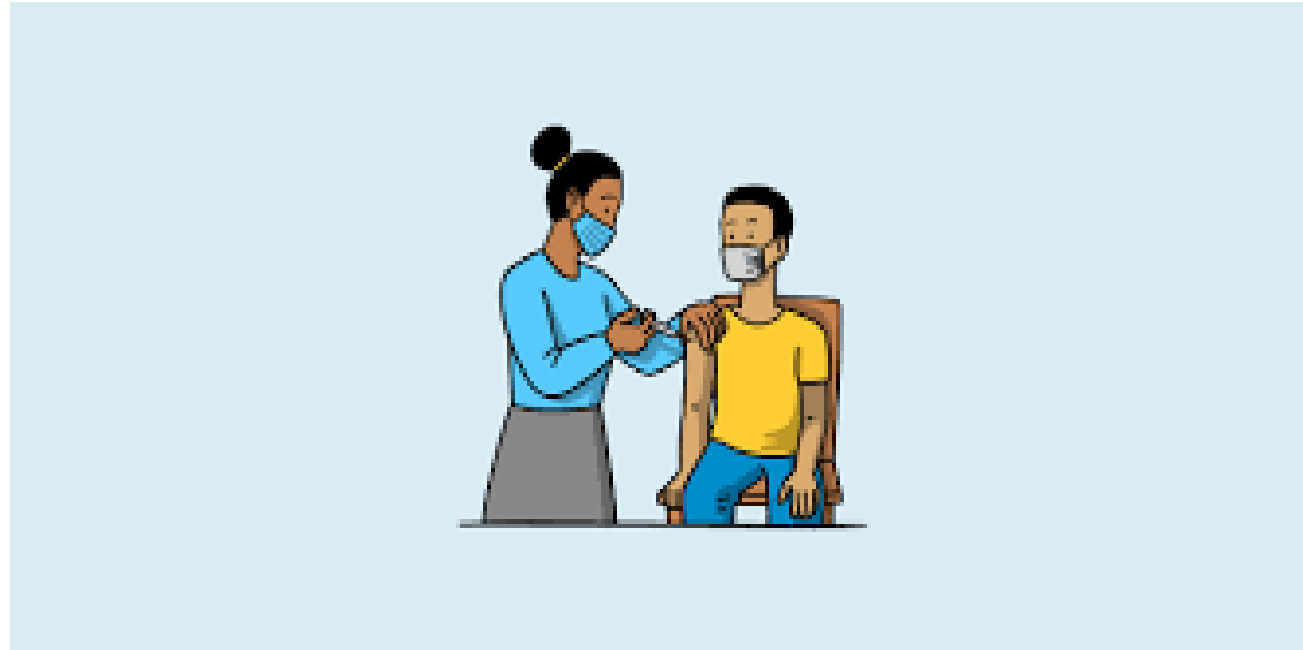
Dealers may not require medical or other verification for sick leave that lasts less than 3 consecutive previously scheduled workdays or shifts.

After 3 or more consecutive workdays or shifts, dealers may request documentation from an employee confirming their eligibility to take sick leave under the sick leave law. Request for documentation is limited to the following:

1. An attestation from a licensed medical provider supporting the existence of a need for sick leave, the amount of leave needed, and a date that the employee may return to work, or
2. An attestation from an employee of their eligibility to leave.

* Dealers may not require employees to provide confidential information, including the nature of an illness, its prognosis, treatment, or other related information.

NEW YORK COVID-19 VACCINATION LEAVE



NEW YORK COVID-19 VACCINATION LEAVE

- On March 12, 2021, Gov. Cuomo signed legislation providing all employees in NY with COVID-19 vaccination leave.
- Employees receive up to 4 hours of leave *per* vaccination.
- Leave for vaccination must be provided at the employee's regular rate of pay.
- This leave may not be taken from any other available leave.

NEW YORK COVID-19 VACCINATION LEAVE - FAQ

- An employee may take more than 4 hours to receive the vaccine, but an employer only needs to pay for up to 4 hours.
- The leave cannot be used to help another person receive a vaccine.
- Employers can require employees to provide notice before taking this leave.
- Employers can require proof of vaccination, but should consider confidentiality requirements applicable to such records.
- Does not apply retroactively.

QUARANTINE GUIDANCE FOR VACCINATED PEOPLE

Following Exposure to COVID-19

- Fully vaccinated – if no symptoms, no quarantine.
- Recently recovered – if no symptoms and if exposure happens within 3 months after symptom onset/first positive test, no quarantine.
- Everyone else – quarantine for 10 days after exposure.
- Travel – **no quarantine requirement for asymptomatic travelers, but special provisions for health care personnel.**

Questions?



The information in this presentation is intended as general background information on labor and employment law. It is not to be considered as legal advice. Employment law changes often and information becomes rapidly outdated.

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