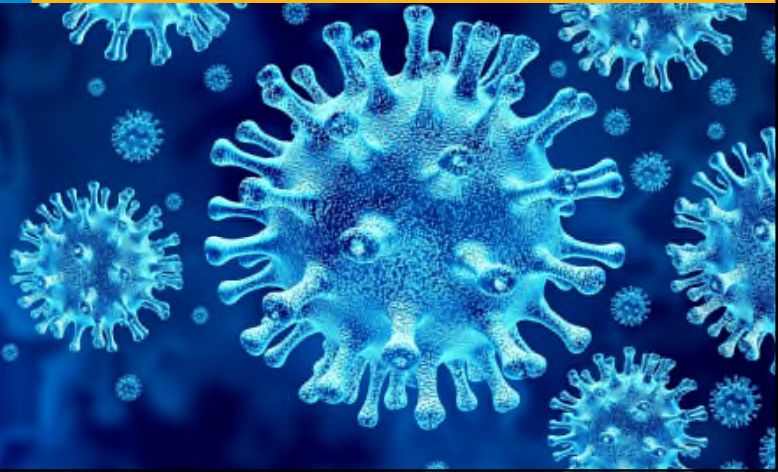


# Bond

NYS Care Management Coalition

## *New York and Federal Workplace Requirements for COVID-19*



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## Presenters



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## Subjects for Webinar Program

- New York
  - Executive Orders 202.4, 202.6 & 202.8
  - Empire State Development Corporation Guidance
  - Paid Sick Leave
- Federal
  - Expanded FMLA
  - Emergency Paid Sick Leave
- FAQs and Best Practices



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## New York COVID-19 Executive Orders & Workplace Initiatives



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## Gov. Cuomo Executive Order 202.4 (3/16)



“Any local government or political subdivision shall, effective March 17, 2020, allow non-essential personnel as determined by the local government, to be able to work from home or take leave without charging accruals, except for those personnel essential to the locality’s response to the COVID-19 emergency.

Such non-essential personnel shall total no less than fifty-percent (50%) of the total number of employees across the entire workforce of such local government or political subdivision.”



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## Gov. Cuomo Executive Order 202.6 (3/18)

- Effective on March 20 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 50% no later than March 20 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. This includes essential health care operations including research and laboratory services; essential infrastructure including utilities, telecommunication, airports and transportation infrastructure; essential manufacturing, including food processing and pharmaceuticals; essential retail including grocery stores and pharmacies; essential services including trash collection, mail, and shipping services; news media; banks and related financial institutions; providers of basic necessities to economically disadvantaged populations; construction; vendors of essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses; vendors that provide essential services or products, including logistics and technology support, child care and services needed to ensure the continuing operation of government agencies and provide for the health, safety and welfare of the public;



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## Gov. Cuomo Executive Order 202.8 (3/20)

- The provisions of Executive Order 202.6 are hereby modified to read as follows: Effective on March 22 at 8 p.m.: All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100% no later than March 22 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function. Any business violating the above order shall be subject to enforcement as if this were a violation of an order pursuant to section 12 of the Public Health Law.



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## “Essential” Status Determination

- ESDC Guidance
  - Examples of operations within various industries
  - <https://esd.ny.gov/guidance-executive-order-2026>
- ESDC Determination
  - Entities may submit requests for “essential” designation
  - <https://esd.ny.gov/content/request-designation-essential-business-purposes-executive-order-2026>



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## “Essential” Status Determination

- Applicant must now certify that they have reviewed ESD Guidance and are **NOT** a per se essential business before submitting an application:
  - I hereby certify that I have reviewed the guidance issued by the New York State Department of Economic Development d/b/a Empire State Development *and I have determined that my business is NOT an essential business or function* as stated therein but I am requesting that my business be designated essential because it is in the best interests of New York State to have my business’s workforce continue at full capacity in order to properly respond to the COVID-19 emergency



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## Essential Services

- Licensed mental health providers
- Providers of basic necessities to economically disadvantaged populations:
  - Human service providers whose function includes the direct care of patients in state-licensed or funded voluntary programs
  - The care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities
  - Those operating community shelters and other critical human services agencies providing direct care or support
- Vendors that provide essential services, including child care programs and services



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## NY Paid Sick Leave – Effective Immediately

- Employer-provided leave and other benefits for employees subject to mandatory or precautionary orders of quarantine or isolation issued by NYS, DOH, local board of health, or other authorized governmental entity, due to COVID-19
  - Exceptions: when employee: (i) is asymptomatic or has no medical diagnosis, and can work remotely; or (ii) engaged in certain foreign travel despite knowing of CDC designations (may still have some leave rights)
- Covers: Private and public-sector employers



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## NY Paid Sick Leave (Cont.)

Employer Size (measured as of 1/1/20)	Paid Sick Time	(Additional) Unpaid Leave
<b>10 or fewer employees &amp; net income &lt; \$1M</b>	N/A	Until termination of quarantine/isolation order
<b>10 or fewer employees &amp; net income &gt; \$1M</b>	At least 5 days	Until termination of quarantine/isolation order
<b>11 to 99 employees</b>	At least 5 days	Until termination of quarantine/isolation order
<b>100+ employees</b>	At least 14 days	N/A?
<b>All “public employers”</b>	At least 14 days	N/A?



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## NY Paid Sick Leave (Cont.)

- Rate of pay?
  - Public employers: Regular rate of pay
  - Private employers: *Not specified*
- Reinstatement rights
- Anti-discrimination/retaliation protections
- Impacted by federal paid leave and benefits
- No impairment of CBA rights
- Effective immediately



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## Additional Key NY Changes

- PFL/DBL benefits available during unpaid leave due to quarantine or isolation order
  - Concurrent receipt of PFL/DBL!
  - Maximum benefit of \$2,043.92 under both PFL and DBL
- PFL benefits available for employee to care for minor dependent child subject to quarantine or isolation order
- No waiting period for UI if eligible due to COVID-19 closure or governmental quarantine or isolation order



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## NY Benefits(Cont.)

- As of right now, these benefits only come into play if an employee is subject to a mandatory or precautionary **order** of quarantine
- Benefits do **not** apply if someone is told to stay home by a physician or by their employers
- Benefits do **not** apply if someone is laid off or placed on furlough
  - Still eligible for unemployment benefits



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## Federal COVID-19 Workplace Initiatives (Families First Coronavirus Response Act –FFCRA)



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## Federal Emergency FMLA Expansion

- Covers: Private sector employers with less than 500 employees and public sector employers
  - Exemption for healthcare provider and emergency responder employees
  - Potential regulatory exemption for small employers
- Provides: Employees with protected FMLA leave when they are unable to work (or telework) due to the need to care for a daughter or son under the age of 18, if that child's elementary school, secondary school, or place of care has been closed, or if the son or daughter's paid child care provider is not available, due to COVID-19
  - Eligibility → Must have been employed for 30-days prior to leave



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## Federal Emergency FMLA Expansion (Cont.)

- 12 Weeks of FMLA coverage (first 10 days is unpaid)
  - May use the Federal Paid Sick Leave during this time
- Employers must provide paid leave after first 10 days of unpaid leave
  - Employee may substitute other leave benefits during initial period
- Pay rate?
  - Not less than two-thirds of "regular rate" (FLSA) multiplied by # of hours normally scheduled
  - Capped at \$200 per day and \$10,000 total
- Reinstatement rights
- Quarterly tax credits
- USDOL: Effective April 1, 2020



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## Federal Emergency Paid Sick Leave

- **Covers:** Private sector employers with less than 500 employees and public sector employers with one or more employees
  - Exemption for healthcare provider and emergency responder employees
  - Potential regulatory exemption for small employers
- **Provides:** Paid sick leave when employee is unable to work **or telework** because:
  - 1) The employee is subject to a governmental quarantine or isolation order related to COVID-19
  - 2) The employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns
  - 3) The employee is experiencing symptoms of COVID-19 and seeking diagnosis



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## Federal Emergency Paid Sick Leave (Cont.)

- **Provides:** Paid sick leave when employee is unable to work or telework because (cont.):
  - 4) The employee is caring for an individual subject to a governmental quarantine/isolation order or health care provider recommendation
  - 5) The employee is caring for an eligible “son or daughter” under age 18
  - 6) The employee is experiencing any other “substantially similar condition” specified by HHS Secretary



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## Federal Emergency Paid Sick Leave (Cont.)

- Amount of leave time?
  - Full-time: Up to 80 hours of pay
  - Part-time: Up to average # of hours over two-weeks
- How Much Do you Receive? Set at highest of:
  - Employee's "regular rate" (FLSA);
  - Federal minimum wage rate; or
  - State or local minimum wage rate; unless...
  - ...absence for is or reasons 4), 5), or 6) → two-thirds
- Capped at \$511 per day and \$5,110 total (or \$200/\$2,000)



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## Federal Emergency Paid Sick Leave (Cont.)

- Can FFCRA Leave be taken intermittently?
  - Yes, if employer allows it and if employee is unable to telework during a normal schedule
  - If an employee cannot telework at all, then leave cannot be taken intermittently
- Continuation of health insurance
  - If employee is participating in group health coverage, he/she can continue on same terms (including payment of premiums) as if working



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## Federal Emergency Paid Sick Leave (Cont.)

- What happens if an employee qualifies for Emergency FMLA but has already used 12 weeks of FMLA for a different qualifying reason?
  - US DOL guidance and FMLA regulations state that an employee is only entitled to a total of 12 weeks of FMLA, regardless of the reason
  - Still entitled to 10 days of Paid Sick Leave



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## Federal Emergency Paid Sick Leave (Cont.)

- Employees immediately eligible (no waiting period)
- Employers **cannot** require use of other paid time off beforehand
- No carry-over
- Employers cannot require employees to find replacements
- Notice posting obligation (Can use DOL Form)
- Quarterly tax credits
- USDOL: Effective April 1, 2020



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## FAQs and Best Practices



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## FAQs and Best Practices

1. What if an employee tests positive for COVID-19?



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## FAQs and Best Practices

2. What if an employee asks to stop working because of COVID-19 concerns?



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## FAQs and Best Practices

3. What if an employee is worried about getting stopped while driving to an “essential” workplace?



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## FAQs and Best Practices

4. Can the federal Paid Sick Leave and Emergency FMLA be applied retroactively to leave taken before April 1<sup>st</sup>?



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## FAQs and Best Practices

5. What are the differences between a permanent layoff and a furlough?



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## FAQs and Best Practices

6. Can my employees continue to participate in group health insurance during a furlough?



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## Questions?



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## Bond Resources on COVID-19

- <https://www.bsk.com/new-york-labor-and-employment-law-report>
- <https://www.bsk.com/coronavirus/overview>



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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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