

LINDABURY, McCORMICK, ESTABROOK & COOPER, P.C.
MCANY SCENARIOS FOR COVID-19 RELATED LEAVES
April 15, 2020

	1. Employer PTO/Sick Leave	2. NYS COVID-19 Emergency Sick Leave	3 & 4. NYS COVID-19 Emergency Family Leave or Disability	5. FFCRA Paid Sick Leave	6. FFCRA Expanded FMLA (EFMLEA)	7. NYS Paid Family Benefits Law	8. NYS UI & CARES Pandemic Unemployment Insurance (UI) Expansion
Employee ordered to quarantine or isolate by governmental entity	Yes	Yes	Yes	Yes	No	No	Yes
Employee advised to quarantine or isolate by health care provider only	Yes	Maybe	Maybe	Yes	No	No	Yes
Employee is experiencing symptoms of COVID and seeking medical diagnosis	Yes	No	No	Yes	No	No	Yes
Employee unable to work because child's school or daycare closed due to COVID-19	Yes	No	No	Yes	Yes	No	Yes
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 (only applied to FFCRA)	Yes	No	Yes (only to care for minor child)	Yes	No	Yes	Yes
Employee unable to work because caring for another individual who is subject to an order of quarantine or isolation or advised to self-quarantine	Yes	No	No	Yes	No	No	Yes
Employee unable to work due to employer voluntary closing	Yes	No	No	No	No	No	Yes
Employee unable to work due to employer closing by order of state or federal government or authorized entity for COVID-19	Yes	No	No	No	No	No	Yes
Employee laid off due to business slow down or lack of demand due to COVID-19	No	No	No	No	No	No	Yes
Employee furloughed (temporary layoff) due to business slow down or lack of demand due to COVID-19	No (??)	No	No	No	No	No	Yes
Employee reduction of work hours due to business slow down or lack of demand due to COVID-19	Yes (??)	No	No	No	No	No	Yes, Partial
Employee of an essential service employer refuses to work due to self-imposed decision to engage in social distancing and avoid workplace	Yes	No	No	No	No	No	Yes
Employee of an essential service employer is immune-compromised and advised by health care provider to quarantine or self-isolate	Yes	Maybe	Maybe	No	No	No	Yes
Employee of an essential service employer quits job because employer will not allow work from home	No	No	No	No	No	No	Yes

Essential Service in New York:

If your business is not an Essential Business, your business is required to comply with the employment reduction provisions contained in Executive Order 202.8 which requires the number of employees working at each location be reduced by 100% effective March 22, 2020. Employees that work for a non-essential businesses may not be forced to go to the worksite or otherwise threatened if they do not work at a place other than their home. Employer’s of non-essential businesses which force employees to go to worksite may be reported to the Department of Labor at: www.labor.ny.gov/COVIDcomplaint

Guidance on whether New York businesses qualify as “Essential Services” – can be found here: <https://esd.ny.gov/guidance-executive-order-2026> and here: https://esd.ny.gov/sites/default/files/ESD_EssentialEmployerFAQ_033120.pdf

See also guidance on NYC Buildings and Essential/Non-Essential Service in Construction guidance here: https://www1.nyc.gov/assets/buildings/pdf/covid-19_construction_faqs.pdf

For construction guidance see in particular FAQ QUESTION # 14: If my business supports construction and other projects within the energy industry, which projects are considered essential? ANSWER: For this critical infrastructure sector, essential projects will be considered necessary if they are needed to respond to the COVID-19 public health emergency, provide support for basic human services (e.g. health, safety, housing, food, and other components of well-being), or proceed to a point where the project can be safely suspended. These activities must continue to comply with current guidance for maintaining a clean and safe work environment, as well as appropriate social distancing, as issued by the Department of Health. Please consult the below chart for a general reference for the energy industry:

<p>Essential – those activities necessary to respond to the COVID-19 state emergency or to provide basic human services (e.g. food, shelter, safety, health & well-being)</p>	<ul style="list-style-type: none"> • Utility Operations & Maintenance and Capital Plan Activities for: <ul style="list-style-type: none"> ○ Existing power generation (including existing energy storage & EV infrastructure) ○ Utility scale new power generation for projects with an in-service date of September 1 or sooner ○ Existing fuel supply ○ Transmission and distribution infrastructure, including for maintenance, resilience, reliability and demand response ○ Ensuring safe and reliable service to customers • Energy Construction Activities Related to: <ul style="list-style-type: none"> ○ Existing or expanding grid or other critical infrastructure, including but not limited to service of: <ul style="list-style-type: none"> ▪ Transit Facilities
--	--

	<ul style="list-style-type: none"> ▪ Health care facilities ▪ Affordable housing ▪ Homeless shelters ○ New renewable generation or energy storage that are necessary to the continued operation of any of the above
<p>Non-Essential – all other activities</p>	<ul style="list-style-type: none"> • Energy efficiency in existing buildings – all sectors • New power generation – except the above essential • New energy storage – except the above essential • New construction – except the above essential • New EV infrastructure
<p>Emergency –health and safety</p>	<ul style="list-style-type: none"> • Projects necessary to protect health and safety of building occupants, utility customers, or the public including continuation of existing work to extent necessary to create a safe site

COVID-19 RELATED LEAVE (BULLET-POINTS)

1. Employer PTO/Sick Leave

- Employers who are required to provide NYS Covid-19 paid sick leave must provide that leave in addition to any sick leave accruals or paid time off accruals under company policy.
- Paid sick leave under the FFCRA Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.
 - During the first two weeks of unpaid EFMLEA, Employees may not simultaneously take FFCRA paid sick leave and preexisting paid (employer) leave (under CBA/ employer's existing company policy), unless employer agrees to allow employee to supplement the amount employee receives from FFCRA paid sick leave with the employee's preexisting paid leave, up to your normal earnings.
- Paid Family Leave under EFMLEA - After the first two workweeks (usually 10 workdays) of (unpaid) expanded family and medical leave under EFMLEA, employee may elect—or employer may require—that employee take the remaining paid EFMLEA at the same time as any existing paid (employer) leave that, under your employer's policies, would be available in that circumstance. (This would likely include personal leave or paid time off, but not medical or sick leave if employee is not ill).
 - If employee is required to take his existing paid (employer) leave concurrently with his remaining EFMLEA, employer must pay employee the full amount which employee is entitled under existing paid leave policy for the period of leave taken. If employee exhausts his preexisting paid (employer) leave and is still entitled to additional EFMLEA, employer must pay employee at least 2/3 of pay for subsequent periods of EFMLEA taken, up to \$200 per workday and \$10,000 in the aggregate, for EFMLEA.

2. NYS Covid-19 Emergency Sick Leave (New York)

- Qualifying reason: Only for employee subject to a mandatory or precautionary order of quarantine or isolation issued by the State of New York, the Department of Health, local Board of Health, or any government entity authorized to issue such order due to COVID-19. Not available if able to telework



- Additional guidance on obtaining a quarantine order found here: <https://paidfamilyleave.ny.gov/system/files/documents/2020/03/obtaining-order-of-quarantine.pdf> – if unable to immediately obtain quarantine order from local health department (LHD), may still qualify if submit treating doctor attestation that you qualify and follow up with LHD. LHD's must respond within 30 days.
 - medical provider attestation must state:
 - a) Employee (or child for NYS Covid-19 Family Leave) qualifies for Mandatory Isolation: because they either 1) tested positive for COVID-19; or 2) Testing is not currently available, but he/she has COVID-19 symptoms and he/she had contact with a known COVID-19 case.
 - b) Employee (or child for NYS Covid-19 Family Leave) qualifies for Mandatory Quarantine: because they either 1) have been in close contact with someone who has tested positive for COVID-19 or who is currently in mandatory isolation; or 2) have COVID-19 symptoms and have returned within the past 14 days from a country designated with a level 2, 3, or 4 advisory for COVID-19.
 - c) Employee (or child for NYS Covid-19 Family Leave) qualifies for Precautionary Quarantine: because they either 1) are asymptomatic and have returned within the past 14 days from a country designated with a level 2, 3, or 4 advisory for COVID-19; or 2) have been determined to have had proximate exposure with someone who has tested positive for COVID-19 while that person was symptomatic.
- Sick leave benefits is not available to those who returned from travel to level 2 or 3 countries for non-work related travel and were advised
- Max Benefit:
 - **Small businesses** with 10 or fewer employees as of January 1, 2020, and that had a net annual income less than \$1 million last year must provide your employees with: a) Job protection (unpaid sick time) for the duration of the order of quarantine or isolation. - However, Employee may be immediately eligible for compensation by applying for NY Paid Family Leave (PFL) and disability benefits. PFL insurance coverage provides up to 60% of pay, up to a maximum weekly benefit of \$840.70. After receiving full PFL benefit, Employee may also receive disability benefits to match full wages up to a maximum weekly disability benefit of \$2,043.92, for a total of \$2,884.62 per week.
 - **Medium businesses** with 11-99 employees as of January 1, 2020, and smaller employers (1-10 employees) that had a net annual income greater than \$1 million last year must provide your employees with: a) At least 5 days of paid sick leave, and b) Job protection (unpaid sick time) for the duration of the order of quarantine or isolation - After those paid sick days are used, Employee may be eligible for compensation for the remainder of his/her quarantine by applying for NY Paid Family Leave and disability benefits.

- **Large businesses** with 100 or more employees as of January 1, 2020, must provide your employees with: a) At least 14 days of paid sick leave and b) Job protection (unpaid sick time) for the duration of the order of quarantine or isolation. - It is assumed that these paid sick days should cover the period of quarantine.
- For the applicable paid sick leave period (5 or 14 days), employers must pay the amount that the worker would have otherwise received had they been continuing to work for that period based upon the amount that the employee was scheduled or would have been scheduled had the employer's operations continued in its normal due course.
- The number of paid days is calendar days, and the pay required should represent the amount of money that the employee would have otherwise received for the 5 or 14 day period.
- Employers are required to provide Employees with Notice that these days of paid/unpaid leave are available. Form of Notice is not yet published but see this resource: <https://paidfamilyleave.ny.gov/system/files/documents/2020/03/covid-19-sick-leave-employees.pdf>
- An employee does not have to apply for paid sick days if employer is required to offer them. If Employee runs out of paid sick days from his employer, then Employee may apply for NY Paid Family Leave and disability benefits for compensation during the rest of the quarantine by submitting application directly to the employer's disability and Paid Family Leave insurance carrier.
- Takes effect immediately – no waiting period
- No length of prior employment required
- Where federal FFCRA and NY State laws overlap on quarantine benefits, NY State law applies to the extent it gives employees additional benefits beyond what federal law allows.
- For more information <https://paidfamilyleave.ny.gov/COVID19>
- <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

3 & 4. NYS Covid-19 Emergency Family & Disability Leave (New York)

- Qualifying reason: Expands NY's Paid Family Leave benefits program due to Covid-19 to provide benefits for:
 - "Disability" under Act expanded to include: Employees who are unable to work as a result of a mandatory or precautionary order of quarantine or isolation of their own. (Not available if not showing symptoms and physically able to telework)
 - "Family Leave" under Act expanded to include: Leave taken:
 - a) by an Employee subject to a mandatory or precautionary order of quarantine or isolation; and
 - b) To provide care for a minor dependent child who is subject to a mandatory or precautionary order of quarantine or isolation.

- NY PFL does not apply if minor dependent child's school closes just for preventative social distancing purposes (and not pursuant to an order of quarantine/isolation).

- **Max Benefit:**
 - Employee subject to an order of quarantine/isolation = \$840.70 per week (Family Leave) + \$2,043.92 per week (Disability Leave) for a total of \$2,884.62.
 - Family Leave to care for Minor Dependent Child = \$840.70 per week (Family Leave) only.
- Additional guidance on obtaining a quarantine order found here: <https://paidfamilyleave.ny.gov/system/files/documents/2020/03/obtaining-order-of-quarantine.pdf> – if unable to immediately obtain quarantine order from local health department (LHD), may still qualify if submit treating doctor attestation that you qualify and follow up with LHD. LHD's must respond within 30 days. (See what details doctor attestation must include above if don't yet have a quarantine/isolation order)
- In 2020, the Paid Family Leave wage benefit is 60% of your average weekly wage (AWW), up to a maximum weekly benefit of \$840.70. Your AWW is the average of your pay for the last eight weeks in which you worked and received wages prior to starting Paid Family Leave. Disability matches full wages up to maximum benefit of \$2,043.92.
- Takes effect immediately
- No length of employment required
- Employee submits application for these benefits directly to employer's Paid Family and disability insurance carrier
- Act states that if federal government provides sick leave and/or employee benefits related to Covid-19, then the sick/family/disability leave benefits under the NYS Covid-19 Emergency Act will not be available. But if NYS would provide a greater benefit, employee is able to claim the difference of additional benefit available above the federal benefit and under the NYS Act.
- For more information <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>

5. FFCRA Paid Sick Leave (Federal) – under Families First Coronavirus Response Act – also known as “Emergency Paid Sick Leave Act” (**EPSLA**)

- **Qualifying reason:**
 - 1) the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
 - 2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - 3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - 4) the employee is caring for an individual who is subject to an order of quarantine or isolation or is has been advised to self-quarantine;

- 5) the employee is caring for a son or daughter whose school has closed or childcare provider is unavailable due to COVID-19 precautions; or
- 6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury
- **Max Benefit:**
 - 80 hours for FT employees, at regular rate, up to \$511/day or \$5,110 total (for first 3 reasons #1-3 above);
 - 80 hours for FT employees, at 2/3 rate up to \$200/day or \$2,000 total (for last 3 reasons #4-6 above);
 - PT employees get average of hours worked over a 2-week period
- Applies to employers with less than 500 employees (less than 50 may seek exemption if requirements would jeopardize the business as a going concern)
- Employees are eligible for paid sick leave immediately, regardless of length of employment
- Under FFCRA, if satisfy qualifying conditions, a full-time employee is eligible for up to 12 weeks of leave under both FFCRA leaves (two weeks of FFCRA paid sick leave followed by up to 10 weeks of paid EFMLEA) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.
- May not “stack” paid sick leaves. Cannot use 80 hours for one qualifying reason under FFCRA and use another 80 hours for a different qualifying reason. May only take up to 2 weeks/80 hours for sick leave.
- If you become ill with COVID-19 symptoms, you may take paid sick leave under the FFCRA only to seek a medical diagnosis or if a health care provider otherwise advises you to self-quarantine. If you test positive for the virus associated with COVID-19 or are advised by a health care provider to self-quarantine, you may continue to take paid sick leave. You may not take paid sick leave under the FFCRA if you unilaterally decide to self-quarantine for an illness without medical advice, even if you have COVID-19 symptoms. You may not take paid sick leave under the FFCRA if you become ill with an illness not related to COVID-19. Depending on your condition and employer conditions, you may be able to telework during your period of quarantine and therefore not be eligible for FFCRA sick leave.
- Certain health care providers and emergency responders may be excluded
- Takes effect April 1, 2020
- **FFCRA provisions applicable to both FFCRA Paid Sick Leave and EFMLEA:**
 - Employee furloughs because an employer does not have enough work or business, are not entitled to FFCRA paid sick leave or EFMLEA.
 - Where employer is required to close its business due to a lack of work or based on mandatory facility closings related to Covid19 under a federal, state or local directive, (and employees cannot remote work), the employer is not required to

continue to pay FFCRA paid sick or EFMLEA leave beyond the last day the employer stops requiring or asking employees to perform services for the business. Thus, under FFCRA employers can elect to end business operations without being responsible for FFCRA mandated payments and, in lieu, employees may be eligible for Unemployment Insurance benefits.

- For purposes of FFCRA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause you to be unable to work (or to telework) even though your employer has work that you could perform but for the order. *You may not take paid sick leave for this qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order.*
- If employer closes worksite, even for a short (temporary) period of time, employees are not entitled to take FFCRA paid sick leave or EFMLEA. This is true whether employer closes worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive.
- If employer reduces work hours because it does not have work for you to perform, employee may not use FFCRA paid sick leave or EFMLEA for the hours that employee is no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19. You may, however, take paid FFCRA sick leave or EFMLEA if a COVID-19 qualifying reason prevents you from working your full schedule
- Covered employers must post notice of FFCRA requirements in a conspicuous space.
- Eligible employers are entitled to receive a credit in the full amount of the required sick leave and family leave, plus related health plan expenses and the employer's share of Medicare tax on the leave, for the period of April 1, 2020, through December 31, 2020. The refundable credit is applied against certain employment taxes on wages paid to all employees. See IRS guidance here <https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>
- More information – frequently updated FAQs- can be found here <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Sample FFCRA can be found here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- FAQ regarding FFCRA Notice obligation can be found here <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

6. FFCRA Expanded FMLA (Federal) – Expanded Family Medical Leave Act under Families First Coronavirus Response Act - also known as “Emergency Family and Medical Leave Expansion Act” (EFMLEA)

- **Traditional FMLA:** Traditional FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave in a designated 12-month leave year for specified family and medical reasons which may include the flu where complications arise that create a “serious health condition” as defined by the FMLA. By contrast, FFCRA Expanded FMLA or EFMLEA provides for paid family leave due to Covid-19. An employee can take unpaid traditional FMLA leave (beyond the two weeks of emergency paid FFCRA sick leave) where his/her COVID-19-related medical reasons rises to the level of a serious health condition.
- **EFMLEA Qualifying reason:** Only for employees unable to work (or telework), to care for a son or daughter under 18 years if the school has been closed (distance learning = closed) or the childcare provider is unavailable due to a public health emergency.
- **Max Benefit:**
 - First 10 days unpaid (but Employee may elect to use paid sick leave or accrued vacation, personal leave or sick leave from employer policy)
 - After 10 days, paid leave at 2/3 regular rate, capped at \$200/day or \$10,000 total (but employer may require that other paid (employer) sick leave run concurrently)
- Applies to employers with less than 500 employees (less than 50 may seek exemption if requirements would jeopardize viability of business as a going concern)
- Applies to employees who worked 30 days prior to COVID-19 impact
- FFCRA applies to paid leave taken between April 1, 2020 and December 31, 2020.
- Certain health care providers and emergency responders may be excluded
- Takes effect April 1, 2020
- **FFCRA provisions applicable to both FFCRA Paid Sick Leave and EFMLEA:**
 - Employee furloughs because an employer does not have enough work or business, are not entitled to FFCRA paid sick leave or EFMLEA.
 - Where employer is required to close its business due to a lack of work or based on mandatory facility closings related to Covid19 under a federal, state or local directive, (and employees cannot remote work), the employer is not required to continue to pay FFCRA paid sick or EFMLEA leave beyond the last day the employer stops requiring or asking employees to perform services for the business. Thus, under FFCRA employers can elect to end business operations without being responsible FFCRA mandated payments and, in lieu, employees may be eligible for Unemployment Insurance benefits.
 - For purposes of FFCRA, a Federal, State, or local quarantine or isolation order includes quarantine or isolation orders, as well as shelter-in-place or stay-at-home orders, issued by any Federal, State, or local government authority that cause you to be unable to work (or to telework) even though your employer has work that you could perform but for the order. *You may not take paid sick leave for this*

qualifying reason if your employer does not have work for you as a result of a shelter-in-place or a stay-at-home order.

- If employer closes worksite, even for a short (temporary) period of time, employees are not entitled to take FFCRA paid sick leave or EFMLEA. This is true whether employer closes worksite for lack of business or because it was required to close pursuant to a Federal, State, or local directive.
- If employer reduces work hours because it does not have work for you to perform, employee may not use FFCRA paid sick leave or EFMLEA for the hours that employee is no longer scheduled to work. This is because you are not prevented from working those hours due to a COVID-19 qualifying reason, even if your reduction in hours was somehow related to COVID-19. You may, however, take paid FFCRA sick leave or EFMLEA if a COVID-19 qualifying reason prevents you from working your full schedule
- Covered employers must post notice of FFCRA requirements in a conspicuous space.
- Eligible employers are entitled to receive a credit in the full amount of the required sick leave and family leave, plus related health plan expenses and the employer's share of Medicare tax on the leave, for the period of April 1, 2020, through December 31, 2020. The refundable credit is applied against certain employment taxes on wages paid to all employees. See IRS guidance here <https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>
- More information – frequently updated FAQs- can be found here <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Sample FFCRA can be found here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- FAQ regarding FFCRA Notice obligation can be found here <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

7. NYS Paid Family Benefits Law (New York) -

- Qualifying reason: Paid Family Leave is an employee-funded insurance policy that provides job-protected, paid time off for eligible employees to:
 - bond with a newly born, adopted or fostered child, care for a close relative with a serious health condition, or assist loved ones when a family member is deployed abroad on active military service.
 - “Family Member” with a “serious health condition” includes Covid-19 and is much broader, including spouse, domestic partner (including same and different gender couples; legal registration not required), child/stepchild and anyone for whom you have legal custody, parent/stepparent, parent-in-law, grandparent , and grandchild; even if they live out of New York State.

- In 2020, the contribution is 0.270% of an employee's gross wages each pay period. The maximum annual contribution is \$196.72.
- Employer must secure Paid Family Leave insurance unless the union decides to provide the insurance. If union provides the insurance, the benefit must be at least as favorable as what is required by law.
- Maximum Benefit: In 2020, employees taking Paid Family Leave will receive 60% of their average weekly wage (AWW), up to a cap of 60% of the current Statewide Average Weekly Wage (SAWW) of \$1,401.17. The maximum weekly benefit for 2020 is \$840.70.
- In 2020 NY Paid Family Leave is available for up to 10 weeks.
- Full Time Employees eligible after 26 consecutive weeks of employment (where they regularly work 20 or more hours/week).
- Cannot be used for employee's own serious health condition
- Employers cannot require employees to use paid time off while on PFL.
- During PFL:
 - Employees have **job protection**, ensuring they can return to the same job (or a comparable one) when they return from Paid Family Leave.
 - Employees can keep their **health insurance** while on leave on the same terms they had while working.
 - Employers are **prohibited from discriminating or retaliating** against employees for requesting or taking Paid Family Leave.
- For more information, <https://paidfamilyleave.ny.gov/2020>
- More information:
<http://docs.paidfamilyleave.ny.gov/content/main/forms/PFLDocs/Downloadable/Employee/pfl-model-language-for-employee-materials-2020.pdf>

8. NYS Pandemic Unemployment Insurance (New York & Federal) – NYS

Unemployment Insurance (UI) as expanded by Pandemic Unemployment provisions of CARES Act (Coronavirus Aid Relief Economic Security Act)

What Is It?

- Provides an additional \$600 per week, on top of regular benefits, to all UI recipients; (Pandemic Unemployment Compensation)
- Provides an additional 13 weeks of UI benefits, beyond the regular 26 weeks already provided under traditional UI, for a total of 39 weeks of coverage. (Pandemic Emergency Unemployment Compensation); and
- Extended eligibility for individuals traditionally ineligible for state UI benefits (e.g., self-employed workers, independent contractors); (Pandemic Unemployment Assistance)

Qualifying Reason: Those who do not qualify for traditional UI but cannot work because they:

- Are diagnosed COVID-19 or have COVID-19 symptoms and are seeking diagnosis;
- Have a member of household who is diagnosed with COVID-19;
- Are providing care for family or household member diagnosed with COVID;
- Are primary caregiver for a child whose school or care facility closed, due to COVID-19;
- Are unable to reach their place of employment due to an imposed quarantine, or because advised by medical provider to self-quarantine, due to COVID-19;
- Were scheduled to start new employment and cannot reach the workplace as direct result of COVID-19;
- Became the major breadwinner because the head of household died from COVID-19;
- Quit their job as a direct result of COVID-19;
- Had their place of employment closed as a direct result of COVID-19;or
- Meet any additional criteria specified by U.S. Secretary of Labor.

Max and Minimum Benefit:

- UI is based on weekly wages. In New York the current maximum weekly benefit rate is \$504 and the minimum benefit rate is 50% of average weekly benefit amount in New York. For January 27, 2020 -March 31, 2020,the minimum benefit rate is \$172. For April 1, 2020 -June 30, 2020,the minimum benefit rate is\$182
- In addition, PUA benefits will include an additional \$600 per week until July 31, 2020 on top of the traditional UI benefit.

Miscellaneous:

- Individuals are not eligible for PUA or traditional unemployment, if they can telework or are receiving paid sick leave or other paid leave benefits pursuant to a paid leave policy or under other State or local requirements.
- Immediate eligibility, no one week waiting period for PUA
- PUA benefits may cover periods of unemployment up to 39 weeks ending with weeks of unemployment on or before June 31, 2020.
- PUA benefits can be paid retroactively for periods of unemployment, beginning on or after January 27, 2020
- If you work less than four days a week and earn \$504/week or less, you may be eligible to receive partial UI benefits
- Cost of the expansion of benefit amount and weeks of coverage is entirely federally funded. States may not charge employers for any expanded coverage benefits.
- For more information <https://labor.ny.gov/ui/pdfs/ui-covid-faq.pdf>

9. NYC Earned Safe and Sick Time Act (New York City) – n/a

- For construction industry employees covered by a collective bargaining agreement, the law does not apply if the CBA expressly waives the law's provisions

- This Act was expressly waived under Rule 11, Section 1, 4th paragraph of the Local 638 & MCA of New York, Inc. Trade Agreement
- Also known as New York City Paid Sick Time Act

10. Westchester County Earned Sick Leave Law – n/a

- Westchester County is assumed to be outside of territorial jurisdiction

Interplay and Observations of New York State Covid-19 Emergency Leave vs. FFCRA leave

- 1) FFCRA covers more “qualifying reasons” for taking leave than NYS. Also, NYS only covers employees “ordered” to be quarantined/isolated while FFCRA also covers those quarantined/isolated upon the recommendation of their health care provider. (Although NYS guidance on obtaining a quarantine/isolation Order suggests that you could still be eligible if local health department does not immediately respond and employee provides attestation of eligibility from treating physician on a pending application.) For this reason, more employees may be eligible for leave benefits under FFCRA.
- 2) NYS law applies to all employers regardless of size (but changes the amount of paid leave that must be provided based on employer size). FFCRA broadly excludes employers with more than 500 employees and allows employers with less than 50 employees to request an exemption.
- 3) FFCRA Paid leave benefits include monetary caps while NYS Covid-19 do not. Further, NYS Covid-19 Emergency Sick/Family/Disability Leave Act states that if federal government provides sick leave and/or employee benefits related to Covid-19, then the sick/family/disability leave benefits under the NYS Covid-19 Emergency Act will not be available. However, if NYS law would provide a greater benefit, the employee is able to claim the difference of additional benefit available above the federal benefit.
 - For example, FFCRA Paid Sick Leave / FFCRA expanded FMLA overlaps with NYS Covid-19 Paid Sick Leave when the employee’s “qualifying reason” for leave is that he/she is subject to a mandatory or precautionary order of quarantine or isolation due to Covid-19. Under FFCRA, the employee is entitled to 80 hours of paid sick leave at their regular rate of pay, capped at \$511 per day and \$5,111 in the aggregate. Under NYS Paid Sick Leave, based on employer size, the employee could be entitled to 5 or 14 days at the employees regular rate of pay with no cap in the maximum per day or aggregate amount. If the employee makes more than \$511 per day, under NYS Paid Sick Leave, he would be entitled to that higher actual rate of pay (for the 5 or 14 day time period). But, the employer would only be able to submit for federal tax credits up to the max of \$511.
 - Similarly, where FFCRA does not cover employers with more than 500 employees (no tax credits available), those employers (under NYS Covid-19 Paid Sick Leave) must still provide up to 14 days of paid sick leave at the actual rate of pay.

4) CARES Act Employee Retention Credit vs. FFCRA Sick/Family Leave employer tax credit:

- Employer credits for qualified wages are available for both FFCRA Sick/Family Leave as well as Employee Retention Credit under CARES Act. However, IRS guidance makes clear that an employer can claim both types of credits but just not for the same wages. “The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA”
- The CARES Act Employee Retention Credit under CARES is equal to 50% qualified wages (including qualified health plan expenses) that an Eligible Employer pays in a calendar quarter with maximum for each employee for all calendar quarters of \$10,000 (so max credit under CARES is \$5,000).
- The CARES Act does not require employers to pay qualified wages and, Eligible Employers may elect to not claim the Employee Retention Credit under CARES. (By contrast, FFCRA requires certain employers to pay sick or family leave wages to employees who are unable to work or telework due to a COVID-19 circumstance. However, these employers may be entitled to a refundable tax credit for those wages paid under FFCRA).
- See additions IRS guidance regarding these two credits here:
<https://www.irs.gov/coronavirus/coronavirus-and-economic-impact-payments-resources-and-guidance>