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Department
of Labor

PAID LEAVE FOR COVID-19 VACCINATIONS

On **March 12, 2021**, Governor Andrew M. Cuomo signed a new law granting employees paid leave time to receive COVID-19 vaccinations. Below is the full text of the new Labor Law provision (Chapter 77 of the Laws of 2021).

LABOR LAW § 196-C. LEAVE TIME FOR COVID-19 VACCINATION:

1. Every employee shall be provided a paid leave of absence from his or her employer for a sufficient period of time, not to exceed four hours per vaccine injection, unless such employee shall receive a greater number of hours pursuant to a collectively bargained agreement or as otherwise authorized by the employer, to be vaccinated for COVID-19.
2. The entire period of the leave of absence granted pursuant to this section shall be provided at the employee's regular rate of pay and shall not be charged against any other leave such employee is otherwise entitled to, including sick leave pursuant to section one hundred ninety-six-b of this article, or any leave provided pursuant to a collective bargaining agreement.
3. The provisions of this section may be waived by a collective bargaining agreement, provided that for such waiver to be valid, it shall explicitly reference this section of law.

In addition, the law provides that no employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has exercised his or her rights afforded under this act, including, but not limited to, requesting or obtaining a leave of absence to be vaccinated for COVID-19.

FREQUENTLY ASKED QUESTIONS

Q: ARE ALL EMPLOYERS ARE COVERED BY THIS LAW?

For purposes of this law, employers include any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service. Public employers, including state and local government entities, are covered by a separate paid vaccine leave law under New York State Civil Service Law §159-c.

Q: WHAT IS THE MAXIMUM NUMBER OF HOURS OF PAID LEAVE THAT AN EMPLOYEE IS ENTITLED TO UNDER THIS NEW LAW?

The maximum number of hours that an employee is entitled to paid leave under this law depends on the number of required COVID-19 vaccine injections. If a COVID-19 vaccine requires two injections, then the employee would be entitled to two periods of paid leave of up to four hours each (which could be up to 8 hours in total).

Q: WHAT IS A "SUFFICIENT PERIOD OF TIME" TO BE ABSENT FOR A VACCINE INJECTION?

The law does not define this term, however, the paid leave period for a single injection cannot exceed four hours.

Q: CAN AN EMPLOYEE USE THIS PAID LEAVE TO ASSIST A RELATIVE OR ANOTHER PERSON IN GETTING A VACCINE?

No. The paid leave granted by this law is only available to the employee for their own receipt of COVID-19 vaccine.

Q: DO EMPLOYEES HAVE TO BE PAID AT A CERTAIN RATE DURING THIS PAID LEAVE PERIOD?

The law requires employees to be paid at their regular rate of pay.

Q: CAN EMPLOYERS SUBSTITUTE THIS PAID LEAVE OTHER EXISTING LEAVE OPTIONS, SUCH AS PAID SICK LEAVE?

The law does not permit employers to substitute other existing leave options available to the employee, including sick leave under Labor Law §196-b or leave provided by a collective bargaining agreement.

Q: CAN AN EMPLOYER REQUIRE EMPLOYEES TO PROVIDE NOTICE BEFORE TAKING THIS PAID LEAVE PERIOD?

The law does not prevent an employer from requiring notice.

Q: CAN AN EMPLOYER REQUIRE PROOF OF VACCINATION TO ALLOW AN EMPLOYEE TO CLAIM THIS PAID LEAVE PERIOD?

The law does not prevent an employer from requiring proof of vaccination. However, employers are encouraged to consider any confidentiality requirements applicable to such records prior to requesting proof of vaccination.

Q: WHEN DOES THIS NEW LAW BECOME EFFECTIVE?

This law became effective on **March 12, 2021** and will remain in effect until **December 31, 2022**.

Q: WHAT IF AN EMPLOYEE TOOK TIME OFF TO GET VACCINATED BEFORE THIS LAW WENT INTO EFFECT?

This law does not create any retroactive benefit rights and only employees receiving vaccinations on or after **March 12, 2021** are eligible for paid leave. However, nothing in the law prevents employers from voluntarily providing employees with such benefits retroactively.

Q: HOW DOES THIS LAW AFFECT LEAVE PROVISIONS UNDER COLLECTIVE BARGAINING AGREEMENTS?

The rights afforded under this law may be waived in a collective bargaining agreement. To satisfy the requirements of this law, any agreement must specifically reference Labor Law §196-c.

Q: WHAT SHOULD AN EMPLOYEE DO IF HE OR SHE IS DENIED PAID LEAVE UNDER THIS NEW LAW?

The employee should contact the Department of Labor to file a complaint at **1-888-4-NYSDOL (1-888-469-7365)** or by filing a complaint at labor.ny.gov/formsdocs/wp/LS710.pdf

Q: WHAT SHOULD AN EMPLOYEE DO IF HE OR SHE HAS BEEN RETALIATED AGAINST FOR EXERCISING HIS OR HER RIGHTS UNDER THIS NEW LAW?

Employees who believe that they have been retaliated against for exercising their paid leave rights should contact the Department of Labor's Anti-Retaliation Unit at **888-52-LABOR** or LSAsk@labor.ny.gov.