

## Catherine Muth

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**From:** Catherine Muth  
**Sent:** Friday, March 20, 2020 4:57 PM  
**To:** Catherine Muth  
**Cc:** Peter Coleman; Linda Seipel  
**Subject:** Potential Benefits to NY Employees

BNMA Members:

We have received a lot of questions on the benefits employees are eligible to receive during this time. In order to provide you with the best information, the BNMA has compiled the following. If you have any questions, please reach out and we will use our trusted advisory partners to respond promptly. Also remember to frequently visit the [BNMA's webpage](#) on COVID-19, which is constantly being updated with links to our communications and other resources.

Bond, Schoeneck & King (BSK) is holding weekly webinar updates and discussions on the legal and practical implications of COVID-19 and the subsequent legislations. You may register for the webinars and view previous webinars [here](#).

Please note, it is currently our understanding that the paid sick leave and family medical leave benefits outlined below, are for those employees actively employed at the time the need for the leave arises. Unemployment insurance is to be utilized by all employees who are laid off as a result of a business closure, temporary shut down, or similar situation. Again, it is our understanding that once an employee is laid off, that employee is no longer eligible for the paid sick or family leave benefits outline below. However, once an employee is out on paid sick or family leave, you need to be sensitive about any employment actions taken concerning that employee. You should reach out to employment counsel to discuss the particular situation as these statutes contain anti-retaliation provisions These benefits are new and are rapidly evolving. We, as the BNMA, will continue to work with our partners to provide further guidance as more information is made available.

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**New York State COVID-19 Paid Sick Leave**

- Covers private sector employers, with particular requirements for employers with 100 or more employees (and different requirements for smaller employers)
- Provides employees subject to a mandatory or precautionary order of quarantine or isolation issued by NYS, NYSDOH, local board of health, or any duly-authorized governmental entity, due to COVID-19
- Offers at least 14 days of employer-paid sick leave during any quarantine AND potential eligibility for paid family leave and disability (language being verified BSK)
- Reinstatement rights (right to go back to work) apply
- Quarantine or isolation order sufficient proof for benefits
- Federal benefits supersede NY benefits, unless NY is great (then, have to pay the difference)
- Effective 3/28/2020

**Federal Emergency FMLA Expansion**

- Covers private sector employers with less than 500 employees
- Provides employees with protected FMLA leave when they are unable to work or telework because of the need to care for a daughter or son under the age of 18, if that child's 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
- 30-day eligibility requirement
- Employers must provide paid leave after first 10 days of leave
  - Employee may substitute other leave benefits during initial period
- Pay must equal not less than 2/3 of regular rate multiplied by number of hours normally scheduled

- Capped at \$200/day and \$10,000 total
- Reinstatement rights (right to go back to work) apply
- Quarterly tax credits to offset employer payments
- Effective not later than 4/2/2020

### **Federal Emergency Paid Sick Leave**

- Covers private sector employers with less than 500 employees (\*Potential regulatory exemption for small employers)
- Provides sick leave with employee is unable to work or telework because:
  - Employee is subject to a government quarantine or isolation order related to COVID-19
  - Employee has been advised by a health care provider to self-quarantine due to COVID-19 concerns
  - Employee is experiencing symptoms of COVID-19 and seeking diagnosis
  - Employee is caring for an individual subject to a governmental quarantine or isolation or health care provider recommendation
  - Employee is caring for an eligible “son or daughter” under age 18
  - Employee is experiencing any other “substantially similar condition” specified by HHS Secretary
- Full Time = 80 hours of pay/Part Time = Average # of Hours Over 2-Weeks
- Pay set at highest of:
  - Employee’s regular rate (FLSA)
  - Federal minimum wage
  - State/local minimum wage
  - UNLESS:
    - Absence is for above highlighted reasons, then pay is 2/3rds
  - Capped at \$511/day and \$5,110 total (or for 2/3rds: \$200/day and \$2,000 total)
- Employees are immediately eligible
- Employers cannot require use of other paid time off beforehand
- No carry-over
- Employers cannot require employees to find replacements
- Quarterly tax credits to offset employer payments
- Effective not later than 4/2/2020

### **Unemployment Insurance Benefits**

- Laid off employees may apply for AND should receive benefits
  - State and federal legislation eliminated one-week waiting period
- Employees who voluntarily leave may be deemed ineligible
- ALL eligibility decisions rest with NYS
- AS AN EMPLOYER, DO NOT MAKE PROMISES TO EMPLOYEES THAT THEY WILL RECEIVE BENEFITS

### **Additional Resources**

[USDOL Wage & Hour Division - Q&A regarding COVID-19 impact on pay](#)  
[OSHA Guidelines on Preparing Workplaces for COVID-19](#)

As always, both Peter and I are available via email and phone. We are here to support you.

### **Catherine L Muth**

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**\*\*At this time, I will be working remotely, out of the office. I am available via email and phone (cell phone – 585-216-5860) and will respond to any messages I receive in my normal manner. The BNMA is still operating and is here to support its members.\*\***