



April 30, 2020

**Re: Newly Enacted Leave Legislation in New York in Response to COVID-19**

At MetLife, we have been monitoring the evolving situation regarding COVID-19 and how recent legislation in New York may impact our customers' leave plans and obligations to provide disability ("DBL") and paid family leave ("PFL") benefits. We are reaching out to you regarding the New York law, which was enacted and became effective on March 18, 2020 and what it may mean for you and your workforce.

On March 18, 2020, Governor Cuomo enacted an unconsolidated law (the "Law") requiring employers to provide job-protected leave and benefits to employees during a governmental mandatory or precautionary order of quarantine, between a combination of a newly created sick leave requirement, along with DBL and/or PFL benefits, depending on the size of the employer. The Law is effective immediately.

Although the law impacts employers of different sizes differently, every employer with New York employees is subject to the Law. Even though the Law is effective immediately, employees are only eligible to receive sick leave and/or DBL and/or PFL benefits where there is 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 governmental entity duly authorized to issue such an order due to the COVID-19**. Thus, the requirements of the Law do not apply to employees who self-quarantine or who are directed by their employer or a physician to quarantine. **Based on guidance we received from the Workers' Compensation Board, Governor Cuomo's 10-Point NYS on PAUSE Executive Order does not qualify as a mandatory or precautionary order of quarantine under the Law.**

Notably, employees who can work remotely are not entitled to leave or benefits under the Law. The Law is intended to help employees who cannot work remotely and who need wage replacement benefits due to a governmental mandatory or precautionary order of quarantine or isolation due to COVID-19. Attached to this letter is a summary of the Law, along with some FAQs regarding the Law.<sup>1</sup>

Following the enactment of this legislation, on March 30, 2020, the Workers' Compensation Board adopted an emergency regulation amending the definition of "serious health condition" to also include "a COVID-19 diagnosis by a health care provider." 12 N.Y.C.R.R. § 355.9. This

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<sup>1</sup> **We have made some updates to this letter since its initial release to reflect additional guidance we received from the Workers' Compensation Board. The new information in this letter is highlighted in bold and red font so you can clearly see the relevant updates.** Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.

change will impact traditional PFL claims unrelated to the Law, when an employee requests leave to care for a family member with a serious health condition.

### **What Does This Mean For You and Your Workforce?**

- Consult with your legal counsel to confirm which aspects of the Law apply to you and to create a legally compliant plan that works best for you and your employees.
- Depending on the size of your New York workforce, expand existing PTO or sick leave programs to comply with the requirements of the Law.
- During any applicable paid sick leave for a quarantine period, employers should continue paying employees through their payroll. This would create a seamless benefit experience for employees and limit payroll disruptions.
- Continue monitoring federal, state, and local legislation for additional changes that could impact your obligations as an employer to provide leave and benefits to your employees. MetLife is monitoring federal and state legislation as well and will continue to provide you with updates after they become available.
- Contact MetLife and let us know how many employees you had as of January 1, 2020, so we can determine whether your DBL/PFL plan will help cover some of the benefits required by the Law.
- If you are subject to the provisions of the Law that require employers with fewer than 100 employees to provide DBL and/or PFL benefits to employees during a governmental mandatory or precautionary order of quarantine or isolation, MetLife will automatically expand your existing DBL/PFL policies to provide benefits as required by the Law. MetLife is prepared to support your employees' DBL and PFL claims using the same processes in place today.

### **How is MetLife handling DBL/PFL claims for COVID-19 related quarantines?**

MetLife recognizes that obtaining a mandatory or precautionary order of quarantine from the state may be challenging for your employees. As a result, for DBL or PFL claims where the employee submits confirmation from a health care provider of a COVID-19 diagnosis, MetLife will conditionally approve up to 14 days of applicable quarantine benefits described in the Law, pending the submission of the governmental order of quarantine, except where prohibited by law. We will apply any contractual and legal eligibility provisions. MetLife implemented this process beginning on April 9, 2020 and may reassess this process at any time based on how this crisis unfolds.

We understand that you may have questions about COVID-19 and the impact on your workforce. To help support our customers, we created a dedicated page on our website to keep track of the rapidly moving and evolving challenges for our customers. For up-to-date information, visit the MetLife microsite at <https://www.metlife.com/covid-19-update-ceo-faq> or reach out to any member of your Account Team.

In addition, the State of New York created the following website to help you with your questions regarding the Law, available at <https://paidfamilyleave.ny.gov/COVID19>.

## Summary of the New York Law and FAQs

If your New York employees are under a mandatory or precautionary order of quarantine or isolation issued by the State or New York, the department of health, local board of health or any governmental entity duly authorized to issue such an order due to the COVID-19, you will be required to provide the following types of leave and/or benefits depending on your employee count:

Employees	NY Leave and Benefit Requirements
100 or more employees	Employers must provide paid sick leave to their employees for the full duration of the quarantine period
11-99 employees	<ul style="list-style-type: none"> <li>• Employers must provide paid sick leave to their employees for the first five calendar days of the quarantine at 100% of their pay</li> <li>• <a href="#">PFL/DBL Insured: After the fifth calendar day of leave, employees are eligible for DBL and/or PFL benefits until the end of the quarantine period. During the PFL/DBL benefit period, employers must provide unpaid sick leave to employees.</a></li> </ul>
10 or fewer employees, with employer net income of more than \$1 million	<ul style="list-style-type: none"> <li>• Employers must provide paid sick leave to their employees for the first five calendar days of the quarantine at 100% of their pay.</li> <li>• <a href="#">PFL/DBL Insured: After the fifth calendar day of leave, employees are eligible for DBL and/or PFL benefits until the end of the quarantine period. During the PFL/DBL benefit period, employers must provide unpaid sick leave to employees.</a></li> </ul>
10 or fewer employees with employer net income of up to \$1 million	<ul style="list-style-type: none"> <li>• <a href="#">PFL/DBL Insured: Employees are eligible for DBL and/or PFL benefits during the entire quarantine period. During this time period, employers must provide unpaid sick leave to employees.</a></li> </ul>

In sum, employers with **100 or more employees** as of January 1, 2020 must provide paid sick leave to their employees during the entire governmental quarantine period. Based on guidance that we recently received from the Workers’ Compensation Board, in order to determine employer size for the required benefits, employers should consider the total number of employees, and not only New York employees working in the state.

For employers with **fewer than 100 employees** as of January 1, 2020 employers must provide a combination of paid and/or unpaid sick leave, along with DBL and/or PFL benefits to their employees during a governmental quarantine. The Law accomplishes this by effectively expanding the definitions of “disability” and “family leave” for the purpose of the sick time provisions of the Law as follows:

- Disability: an inability by an employee to perform the regular duties of his or her job or any other job the employer may offer the employee as a result of a governmental mandatory or precautionary order of quarantine or isolation due to COVID-19

- Family Leave: either (1) leave when an employee is subject to a governmental mandatory or precautionary order of quarantine or isolation due to COVID-19 **or** (2) to provide care for a minor dependent child of the employee who is subject to a governmental mandatory or precautionary order of quarantine due to COVID-19

**The Workers' Compensation Board recently provided updated guidance indicating that employees may be entitled to PFL when caring for a minor dependent child under a quarantine order, regardless of the size of the employer. If the employee qualifies for child quarantine PFL, the benefit duration is the entire quarantine period. This is a change from prior guidance, which indicated that employees working at employers with 100 or more employees or at public employers are not covered for PFL for a child quarantine. The Law does not require employers to provide sick leave to employees whose children are subject to a quarantine order.**

The Law also provides that employees are eligible to receive DBL and PFL benefits at the same time (where applicable), but only for a qualifying reason under the Law. In addition, the Law removes the seven-day waiting period applicable to other DBL claims. These are key distinctions from the existing DBL and PFL law.

Once an employer with fewer than 100 employees has exhausted any applicable requirement to provide paid sick leave under the Law, DBL and/or PFL benefits will become payable based on the following calculations:

- If applicable, the PFL benefit is calculated first, which amounts to 60% of the employee's average weekly wage, capped at \$840.70 per week
- Second, the DBL benefit will be the difference between the PFL benefit (if any) and the employee's average weekly wage, up to \$2,043.92 per week
- So long as the employee qualifies for disability benefits and family leave as defined by the Law, the employee may collect both DBL and PFL benefits, up to a maximum weekly benefit of \$2,884.62

Your DBL/PFL policy with MetLife will automatically expand to cover DBL and PFL benefits payable to qualifying employees or their minor dependent children subject to a governmental mandatory or precautionary order of quarantine or isolation due to COVID-19.

Separate and apart from the Law, the Workers' Compensation Board adopted an emergency regulation on March 30, 2020 and amended the definition of "serious health condition" under the PFL. Before this regulation, an employee could request PFL to care for a family member who had a serious health condition, which was limited to medical conditions that involved inpatient care in a medical facility (such as a hospital) or continuing treatment or continuing supervision by a health care provider. 12 N.Y.C.R.R. § 355.9. The emergency regulation adds the following language to the definition of a serious health condition: "Serious health condition also means a COVID-19 diagnosis by a health care provider." Although this regulation clarifies that a COVID-19 diagnosis, alone, constitutes a serious health condition, the regulation does not change the requirements that (1) an employee must provide "care" to the family member and (2)

such care be in the family member's close and continuing proximity in order to be eligible for PFL benefits.

As you may be aware, the U.S. Congress recently enacted the Families First Coronavirus Response Act, which requires employers with fewer than 500 employees to provide paid leave to employees for up to 12 weeks for a qualifying COVID-19-related event. Between April 1, 2020 and December 31, 2020, any applicable federal benefits should be paid first. If, however, the New York benefits exceed the federal benefits, an employee is entitled to claim the difference. For additional information regarding the new federal leave program, please visit MetLife's COVID-19 microsite at [https://www.metlife.com/COVID-19\\_US\\_Customer/](https://www.metlife.com/COVID-19_US_Customer/).

## **Frequently Asked Questions (FAQs)**

### **Do I need to have a new DBL/PFL policy with MetLife to provide this benefit?**

- A. No. If you are required to offer DBL and/or PFL benefits per the Law, your existing DBL/PFL policies will be expanded to cover the new qualifying reason for the benefits. All of MetLife's DBL/PFL policies have a "conformity with the law" provision which allows us to immediately implement the requirements of the new law based on your existing coverage.

### **Since I have fewer than 10 employees, how do I know if I need to provide paid sick leave or if my employees can file for DBL and/or PFL benefits?**

- A. According to the Law, you should refer to the net income in the previous tax year to determine net income. If your business has a net income above \$1 million, then you will be responsible to provide up to five calendar days of sick leave, after which employees would be eligible for DBL and/or PFL benefits. For employers with \$1 million of net income or less, then employees are eligible for DBL and/or PFL benefits during the full length of quarantine.

### **Does the Law require paid sick leave if the employee is quarantined by their doctor or if they self-isolate due to potential exposure to COVID-19?**

- A. No. The Law only applies when a mandatory or precautionary order of quarantine or isolation has been issued by the State of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.

### **How can employees receive a mandatory or precautionary order of quarantine?**

- A. According to recent guidance issued by the Workers' Compensation Board, employees must submit an order from their local health department indicating that the employee or minor child is under a precautionary or mandatory order of quarantine or isolation. The guidance also explains how employees can obtain such an order, which is available here: <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-covid-19-faqs>.

### **Will my employees be able to file for leave or benefits under the Law if they are able to work remotely?**

- A. No. Employees who are asymptomatic and working remotely during a period of governmental mandatory quarantine will earn their normal wages and will not be eligible for any leave or benefits provided by the Law.

**Will an employee be able to file for benefits under the Law during a mandatory or precautionary order of quarantine because the employee has taken a personal trip (not work related) and returned to the United States?**

- A. No. Employees who have returned to the United States after certain personal travel, such as travelling to a country for which the Centers for Disease Control and Prevention have a Level 2 or 3 travel health notice, and are quarantined due to that travel are not entitled to paid leave or benefits under the Law. Such employees, however, may use accrued PTO provided by the employer or, if the employee does not have accrued PTO, unpaid sick leave for the duration of the quarantine.

**Will the Law change benefits under a Collective Bargaining Agreement?**

- A. The Law does not impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreements.

**Where can I go for more information about the NY COVID-19 paid benefit?**

- A. The State of New York created the following website to help you with your questions regarding the Law, available at <https://paidfamilyleave.ny.gov/COVID19>.

Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.