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On the shot clock — New York adds mandatory paid leave for COVID-19 vaccinations

By Kimberly K. Harding and David A. Tauster

New York has added yet another level to its increasingly complicated COVID-19 leave landscape. On March 12, 2021, Governor Andrew Cuomo signed legislation granting public and private employees paid leave for COVID-19 vaccinations. Specifically, the law provides for up to four hours of paid leave *per vaccine injection*, to be paid at the employee's regular hourly rate. The law is effective immediately, and will expire and be deemed repealed on December 31, 2022.

The law explicitly provides that this paid leave time may *not* be charged against any other leave an employee is eligible to receive, including specifically leave provided pursuant to New York's recently enacted Paid Sick Leave law. Accordingly, even employers who already provide generous amounts of leave to their employees or who are attempting to promote vaccination among their workforces through mandates or other incentives will be affected by this law.

Moreover, the law is silent about any advance notice or documentation requirements, and it does not obligate employees to consult with their employers to try to schedule vaccine appointments in a way that minimizes disruption to operations. It also provides no exception or modification for small employers.

The law does not appear to require employers to pay employees retroactively for time they may have taken off to receive one or more vaccine doses (although some employers may feel compelled to do so as a matter of internal equity). However, since the provision of the law applicable to private employers has been added to Article 6 of the New York Labor Law (specifically at Section 196-c), employers who violate the law going forward will be subject to severe penalties, including liquidated damages and attorney's fees in the event of private litigation.

While the law obviously imposes a new burden on employers who are already struggling under the weight of an increasingly complex leave environment, some relief may be available. Under a little-noticed provision of the American Rescue Plan Act, the federal government has expanded the types of leave eligible for federal tax credits under the Families First Coronavirus Relief Act to include leave taken for an employee to obtain a COVID-19 vaccination. Accordingly, while employers still must accommodate this leave, they may at least be spared some of the economic hardship resulting from this latest mandate.

Given that the law is effective immediately, and that the vaccine-eligible population is increasing each day, employers should consult with counsel as soon as possible to determine the best means of compliance.

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