



New York Department of Labor Releases Paid Leave Guidance for COVID-19 Vaccinations

Insights

3.29.21

New York State recently granted both private and public employees up to four hours of paid leave per injection to receive the COVID-19 vaccine. While the basics of the leave were outlined in newly added New York Labor Law sections (Section 196-C for private businesses and Section 159-C for public employers), many questions concerning the implementation of this benefit were left unanswered. The New York Department of Labor (DOL) has since issued guidance on the newly passed law answering some of the most Frequently Asked Questions (FAQ).

Key Highlights

- **Employees Are Entitled To Up To Four Hours Paid Leave Per Injection.** The required number of COVID-19 vaccine injections will determine the total number of hours of paid leave. Employees receiving two vaccine injections are entitled to up to eight hours of paid time off under the law. Employees receiving one vaccine injection are entitled up to four hours paid leave. Paid leave for a single injection cannot exceed four hours.
- **The Law Does Not Apply Retroactively.** Only employees receiving vaccinations on or after March 12, 2021 are eligible for this paid leave. DOL advises that nothing in the law prevents employers from applying benefits retroactively to employees who took leave to receive the COVID-19 vaccine before March 12. The law is effective until December 31, 2022.
- **Paid Leave May Only Be Used for Employee Vaccination.** Employees taking time off to assist a relative or friend in getting the COVID-19 vaccine are not entitled to this benefit. The DOL FAQ makes it clear that the paid leave may only be used by the employee “for their own receipt of the COVID-19 vaccine.”
- **Employers Can Require Employees Provide Notice Before Taking Paid Leave.** The DOL notes that the law does not prohibit employers from requiring an employee to provide notice before taking this paid leave, although it leaves ambiguous the manner and amount of advance notice acceptable under the law.
- **Employers Can Require Proof of Vaccination.** DOL notes that the law does not prohibit an employer from requiring proof of vaccination, but, again, leaves ambiguous the manner of acceptable proof. However, the DOL cautions that employers should consider confidentiality requirements for vaccination records before requesting proof. Employers should refer to guidance issued by the EEOC on the confidentiality of medical information.

- **Employers Cannot Substitute This Leave With Existing Leave Options.** The leave cannot be charged against any other leave to which the employee is entitled, including paid sick leave under the Labor Law or a collective bargaining agreement. The provisions of this law can be waived by a collective bargaining agreement, but the waiver must explicitly reference Section 196-C to be valid.

Next Steps for New York Employers

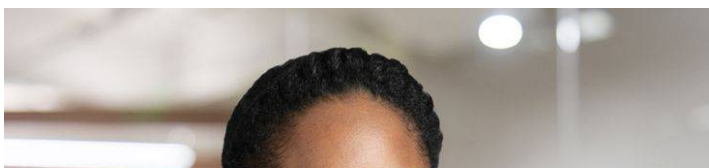
If you haven't already, you should promulgate a policy covering employee vaccination leave under this law. You should specify things like: who with the company is responsible for administering leave, what constitutes acceptable notice, how far in advance the notice must come, what constitutes acceptable proof of vaccination, and when an employee must provide that proof. The fewer questions employees have and the more objective the employer's policy, the less likely issues regarding these requirements will pop up.

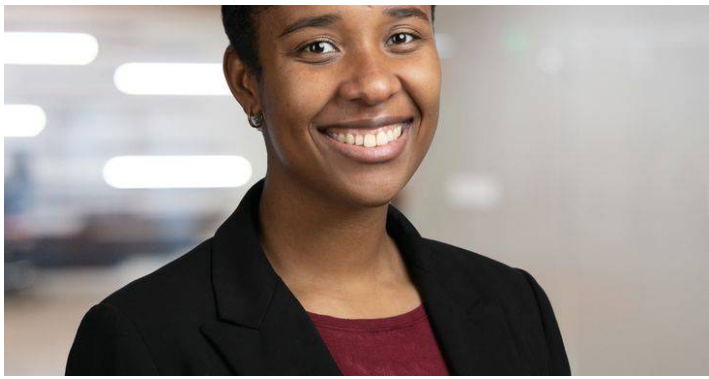
We will continue to monitor developments impacting New York employers, so make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact any attorney in [our New York City office](#) or on our [FP Vaccine Subcommittee](#).

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