

GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION 519 Eighth Avenue, 16th Floor, New York, NY, 10018 Phone: 212-643-2828 Fax: 212-643-2956 www.gnyhcfa.org www.twitter.com/GNYHCFA www.gnyhcfa.wordpress.com

20-19

| TO: | ALL MEMBER FACILITIES |
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| FROM: | ROBIN C. ROSEN, ESQ., LABOR COUNSEL |
| DATE: | MAY 19, 2020 |
| RE: | NYS DOH AND NYS DOL GUIDANCE ON USE OF COVID-19 SICK LEAVE FOR HEALTH CARE EMPLOYEES |

Attached please find new guidance issued by the NYS Department of Health and NYS Department of Labor on the use of New York State paid COVID-19 sick leave for health care employees. As you will see, this guidance covers what documentation is now needed from employees to take paid COVID-19 sick leave, and what effect short staffing has on the length of an employee's covered leave and their return to work. Specifically, the Departments have changed the rules; now there is no requirement for an employee to get an order of quarantine from their local department of health to qualify for the paid leave.

Instead, if an employer directs an employee not to work or prohibits an employee from working because the employer suspects or confirms the employee has been exposed to COVID-19, exhibits symptoms of COVID-19 and/or is diagnosed with COVID-19, the employee shall be deemed to be subject to a mandatory order of quarantine from the DOH. Such employee is entitled to NYS paid COVID sick leave and does not need to provide the employer with any additional documentation.

Additionally, if an employee has tested positive for COVID-19 and/or is symptomatic for COVID-19, the employee must not report to work and shall be deemed to be subject to a mandatory order of isolation from the DOH. The employee must submit documentation from a licensed medical provider that has treated the employee attesting that the employee has tested positive for COVID-19 and/or is symptomatic for COVID-19 to qualify for the paid COVID-

19 sick leave. If the employer gave the employee the test for COVID-19 which showed the positive test, the employee does not need to submit any further documentation.

The guidance also addresses employees' sick leave entitlements when an employer can demonstrate a staffing shortage. Under the guidance, a "staffing shortage" requires that the employer demonstrate: (a) the employer has a staffing shortage of the type of employee that the employer wishes to report to work, and (b) the employer's staffing shortage would adversely impact the employer's ability to safely provide health care services and the employer has not been able to address the shortage through other means.

If an employer can satisfy (a) and (b) above, they may require an employee who has been exposed to COVID-19 to report to work if the employee is asymptomatic for COVID-19; the employee has not tested positive for COVID-19; and the employee's contacts with confirmed or suspected cases of COVID-19 are limited to those that are asymptomatic. For employees who have tested positive for COVID-19 and/or have been symptomatic for COVID-19, an employer can require them to return to work prior to the end of a 14-day quarantine or isolation period if the employer can satisfy (a) and (b) above, and the employee with confirmed or suspected COVID-19 must maintain isolation for at least 7 days after the onset of symptoms, must be fever-free for at least 72 hours without the use of fever reducing medications and must have other symptoms improving. For employees who are asymptomatic but who tested positive for COVID-19, they must maintain isolation for at least 7 days after the date of the positive test and, if the employee develops symptoms during that time, the employee must maintain isolation for at least 7 days after developing those symptoms, must be fever-free for at least 72 hours without the use of fever reducing medications, and must have other symptoms improving, before returning to work.

Once a staffing shortage ends, and the employer no longer satisfies (a) and (b) above, the employer cannot require an employee to report to work if the employee would otherwise qualify for a mandatory or precautionary order of quarantine or isolation.