

CLIENT ALERT

New York State Requires Employers to Provide Paid Leave to Obtain COVID-19 Vaccinations

March 18, 2021

The New York State legislature recently passed a bill ([S2588A/A3354B](#)), signed into law by Governor Cuomo on March 12, 2021, which amends the New York Labor Law and Civil Service Law to grant private and public employees paid leave time for the COVID-19 vaccination. The law is effective March 12, 2021 and will expire on December 31, 2022. Under the new law, employers are required to provide employees with paid leave of absence for COVID-19 vaccinations for a sufficient period of time, not to exceed four hours per COVID-19 vaccine injection. The four-hour maximum per vaccination does not apply to employees subject to a collective bargaining agreement (CBA) providing a greater number of hours, or as otherwise authorized by the employer, to be vaccinated for COVID-19. Where a CBA explicitly references the law, however, its leave provisions may be waived in their entirety.

Currently, the FDA has authorized the use of three vaccines: the Pfizer Inc. and Moderna Inc. vaccines, which each require two doses, and the Johnson & Johnson vaccine, which requires only one dose. Therefore, employees will generally be entitled to up to eight hours of paid leave, depending on the vaccine. This time must be paid at the employee's regular rate of pay for the entire leave period. The law also provides that the paid vaccination leave may not be charged against any other leave to which the employee is entitled, such as any paid sick leave or leave pursuant to a CBA. Discrimination and retaliation against employees for exercising their rights under the law are prohibited.

A review of policies and practices applicable to workforces in New York State concerning paid leave should be conducted in order to identify any revisions necessary to comply with this new law. The impact on this new requirement on various wage and hour issues, such as spread of hours/split shifts and amounts to pay tipped employees where applicable, should be considered as well. The new law is silent on what, if any, documentation an employer can request from its employees to verify such paid leave. The Equal Employment Opportunity Commission has, however, previously concluded that employers can request proof of receipt of a COVID-19 vaccination, but should consider informing employees not to provide any related medical information. While this New York State statute does not set forth a notice provision, employers should consider ways to advise employees that they are eligible for paid leave under these circumstances.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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