

Coronavirus Gives New Momentum To Paid Sick Leave Push

By **Emily Brill**

Law360 (March 7, 2020, 1:44 PM EST) -- Congressional Democrats introduced a bill Friday that would require businesses to provide paid sick leave, a sign that concerns over the new coronavirus are ratcheting up pressure on lawmakers and employers to address the lack of sick time offered to most American workers.

The bill would bring the country in line with other wealthy industrialized nations, correcting an imbalance that has long existed: Currently, the United States is the only one of 22 rich countries that doesn't guarantee any form of paid sick leave to workers, according to a study by the Center for Economic and Policy Research.

Introduced by Sen. Patty Murray, D-Wash., and Rep. Rosa DeLauro, D-Conn., the bill would guarantee workers seven days of paid sick leave and 14 additional days in the event of a public health emergency like the coronavirus epidemic, which had infected more than 300 Americans across 21 states as of Friday evening, according to U.S. officials.

Worldwide, coronavirus has infected more than 100,000 people and claimed more than 3,400 lives, with the most sizable outbreaks in Italy, Iran, South Korea and China, the virus' country of origin, according to media reports.

"The lack of paid sick days could make coronavirus harder to contain in the United States compared with other countries that have universal sick leave policies in place," DeLauro said in a statement Friday. "No one should face the impossible choice of caring for their health or keeping their paycheck or job, especially when a sudden public health crisis occurs."

Yet, millions of Americans currently face this choice, DeLauro said. Roughly 25% of American workers in the private sector — about 32 million people — don't get paid sick leave, according to the U.S. Bureau of Labor Statistics. That includes more than half of workers in the leisure and hospitality industries, which includes hotel and restaurant employees, according to the data.

Workers' advocates have long pushed for paid sick leave laws, notching some notable victories: 12 states and Washington, D.C., have enshrined policies to guarantee workers paid time off when they're sick, according to the advocacy group Family Values @ Work, which tracks these laws. New York, Virginia and Illinois are considering joining these states, the group's co-director, Ellen Bravo, told Law360 on Friday.

Bravo said she thinks the bill introduced by Murray and DeLauro will pass the House, but she isn't as confident it will pass the Senate. President Donald Trump's response to the coronavirus so far doesn't bode well for the bill to pick up his signature, Bravo said.

But without a national policy, workers in 38 states are left crossing their fingers that their employer will pay them for sick days.

"In the absence of federal law or being in a state without a paid sick leave law, it's up to employers to decide whether they want to have paid sick leave or not," said Trina Fairley Barlow, a partner in the labor, employment and government contracts group at Crowell & Moring LLP.

Chances are, if workers are part of a low-wage, public-facing industry, like retail or service, their employer won't offer paid sick time, BLS data indicates.

That becomes a huge issue during public health crises, when it's important that sick people in public-facing jobs stay home. But many won't because they can't lose a paycheck, Bravo said.

"There's no way to keep the population of the U.S. safe if people don't have paid time to get well, to get tested, to get quarantined," Bravo said. "The CDC says, 'Stay home when you're sick,' but for a lot of people, doing just that can cost them their pay, if not their job."

Bravo's organization, which has chapters in 27 states that advocate for paid sick days and paid family leave, is among the groups ramping up the pressure on governments and corporations to address Americans' lack of paid sick time as the coronavirus spreads. On Thursday, the group issued a call to action urging employers to offer paid sick time to those who need it and asking governments to adopt or expand paid sick leave laws.

Many governments and companies are feeling the heat. New York Gov. Andrew Cuomo said Tuesday that he would alter the paid sick leave bill he sent to lawmakers to require employers to pay quarantined workers and hold their jobs open. Trader Joe's adopted a temporary policy of reimbursing sick workers for their time off, Business Insider reported. And workers at various Chipotle restaurants in New York City held walkouts and pickets throughout the week after managers allegedly told employees to work while sick, according to 32BJ SEIU, a union that has advocated for the employees.

Jeremy Pereyra, a grill cook at the Chipotle on 56th St. and Sixth Avenue in Manhattan, told Law360 that his managers told him to work last Friday despite his flu-like symptoms.

"They didn't even ask me if I was OK. They asked if I had a fever, nausea or diarrhea. I don't, but I don't feel well. I've had pinkeye before, and they still make me come to work," Pereyra said. "And I'm on the grill — I handle the most amount of food."

The Chipotle where Pereyra works technically offers paid sick time, as per New York City law. But the store has repeatedly been accused of violating the law, and last week it **agreed to pay a worker \$2,500 and give her her job back** after firing her for using sick time.

Workers at 11 New York Chipotle locations have filed complaints alleging they were told to work while sick, according to 32BJ SEIU.

"I got punished for calling out about two weeks ago — I went to the hospital, had a doctor's note and everything. They threatened to fire me next time," Pereyra said. "You know that Chipotle was big on the norovirus and the e. coli outbreak in the Midwest. That could just as easily be coronavirus. Because they care about coverage, and not being short-staffed."

Chipotle was not immediately available for comment.

Rachel Demarest Gold, a partner at Abrams Fensterman Fensterman Eisman Formato Ferrara Wolf & Carone LLP who practices employment law, recommended that employers let their workers stay home when they're sick.

"To the extent that anyone can make sure they are accommodating people when they need it, or are able to let people stay home, that's really the humane thing to do," Gold said. "If everyone would take the time to actually do this, it will absolutely save everyone down the road."

Barlow, the employment law partner at Crowell & Moring, said that whether employers should pay workers for sick time depends on whether they can afford it. There's nothing obligating them, legally, to offer paid sick time during a public health crisis, but there's nothing stopping them, either, she said.

"There's nothing that prevents an employer from reviewing their paid sick leave policy and either allowing for more flexibility for a person taking leave or adding, if it's possible, in times of pandemics, allowing X numbers of hours of additional paid sick leave," Barlow said.

--Editing by Emily Kokoll and Michael Watanabe.