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## New York State Requires Employers to Provide Paid Leave for Employees to Receive COVID-19 Vaccines

New York Governor Andrew Cuomo has signed into law recent legislation mandating that all private and public employers, regardless of employer size or industry, provide up to four hours of paid leave, per dosage, for employees to be vaccinated against COVID-19. Employers must offer leave under the terms of the new law until it expires on December 31, 2022.

As we know, over the past year, new treatments have been developed to battle coronavirus infection in order to turn the tide of the pandemic in the United States and the world. One of those treatments consists of three COVID-19 vaccines that the FDA has authorized to be made available to the general public on an emergency basis. As a result of the newly available vaccines, New York State is requiring all employers to provide leave to all employees with paid time off to be vaccinated.

### How much leave must an employer provide under the vaccination leave law?

The new law, which is codified under Section 196-c to the New York Labor Law and Section 159-c to the New York Civil Service Law, requires an employer to provide “a sufficient period of time,” or up to four hours of paid leave, for each vaccination shot. Thus, an employee would be entitled to up to four hours of paid leave for a one-dose vaccine, or if receiving a two-dose vaccine, up to four hours for each injection.

Notably, although it may be implied in the new law’s broad language, the law does not indicate whether leave must also be provided for re-vaccination or vaccine “boosters” that may at some time be found medically necessary to sustain immunity. The law is also silent on whether such paid leave must be offered retroactively to employees who have already received the vaccine.

### How must the vaccination leave be paid?

This leave must be paid at the employee’s “regular rate of pay.” The law also specifically prohibits employers from requiring employees to exhaust available paid time off, such as sick or vacation time, before providing this leave. However, the law does not contain any provision specifying whether the employee is required to provide notice to receive the leave and no recordkeeping requirements are identified. The new law also specifically prohibits employers from taking any adverse employment actions against employees for seeking to take leave under the law.

### Can an employer require proof of vaccination?

Although the new law does not include information related to requiring proof of vaccination, the present regulatory guidance issued by the Equal Employment Opportunity Commission (“EEOC”) suggests that an employer may require proof of vaccination as long as no medical history or genetic identifying information



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is required in such proof. Employers should also take affirmative steps to advise employees not to provide such information before proof of vaccination is requested and communicate to employees that all vaccination information obtained will be kept confidential.

Additionally, the EEOC still recommends that employers engage in voluntary vaccination policies rather than forcing employees to be vaccinated. If an employer has a mandatory vaccination policy and requires proof of vaccination as a term and condition of employment, the employer must provide employees with the opportunity to obtain a reasonable accommodation for medical conditions and/or sincerely held religious beliefs that may prevent the employee from taking the vaccine.

### Are there any exceptions or exemptions under the new law?

While the new law is applicable to both public and private employers, potential carveouts may exist for private sector employees that are subject to a collective bargaining agreement (“CBA”). The requirements may be lawfully waived by private employers who are party to a CBA if the language therein explicitly references Section 196-c to the New York Labor Law and waives its leave requirements.

As regulatory agencies such as the EEOC have issued guidance on the subject of the legality of employer-mandated vaccinations, and multiple federal and state laws may also be implicated, employers are encouraged to consult with qualified counsel knowledgeable in this area of law before adopting a vaccination policy in the workplace. Employers should also consult with counsel to ensure that existing vaccination policies are revised to reflect the new law’s leave entitlement as well as the relevant non-discrimination and anti-retaliation provisions.

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