

Update on New York State's COVID-19 Sick Leave: Employees Who Engage in Non-Essential Travel to High Risk States Are Ineligible

On March 18, 2020, New York Governor Andrew Cuomo signed into law legislation (the "Act") providing all New York employees with COVID-19-related sick leave (discussed in our previous [alert](#)).¹ On June 24, 2020, Governor Cuomo modified the Act by Executive Order (the "Order") to deem any employee who "voluntarily travels" to a state with a high positive test rate, as defined by the Order ("high risk states"), ineligible for paid sick leave benefits under the Act. This modification applies to employees who travel to high risk states after June 25, 2020 and is currently in effect through July 26, 2020. However, this only applies to voluntary travel; travel "taken as part of the employee's employment or at the direction of the employee's employer" is expressly exempt from the eligibility restriction. The stated purpose of this modification is to address the risk of travel-related COVID-19 cases in New York State.

Under the Order, the high risk states include those with "a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, and which the commissioner of the department of health has designated as meeting these conditions." The Commissioner of Health for New York State has updated the department's [website](#) with the current list of high risk (or "restricted") states.²

The Act already denied sick leave benefits (or any other paid benefits provided for under the Act) to anyone who travels to a country for which the Centers for Disease Control and Prevention ("CDC") has a Level 2 or 3 travel health notice in effect for non-business travel. This restriction is subject to several exclusions detailed in our previous alert, including that employers must inform employees of the travel health notices and the possible forfeiture of the right to paid sick leave prior to travel. Governor Cuomo's Order adds high risk states to the roster of locations employees should avoid in order to remain eligible for paid sick leave benefits under the Act.

To ensure compliance with the notice requirement, employers should email or otherwise contact all employees with instructions on how to monitor the [CDC travel advisories](#) and [New York State travel advisories](#), and inform them that personal travel to countries covered by Level 2 or 3 advisories or high risk states could jeopardize their eligibility for paid sick leave under the Act.

<u>Lisa E. Cleary</u>	212.336.2159	lecleary@pbwt.com
<u>Catherine A. Williams</u>	212.336.2207	cawilliams@pbwt.com
<u>Douglas L. Tang</u>	212.336.2844	dtang@pbwt.com
<u>Sara A. Arrow</u>	212.336.2031	sarrow@pbwt.com
<u>Hyatt M. Howard</u>	212.336.2567	hhoward@pbwt.com
<u>Ryan J. Kurtz</u>	212.336.2405	rkurtz@pbwt.com
<u>Elizabeth C. Quirk</u>	212.336.2547	equirk@pbwt.com

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¹ The Act also provides for expanded access to New York Paid Family Leave and New York statutory short-term disability benefits.

² The current list includes Alabama, Arkansas, Arizona, California, Florida, Georgia, Iowa, Idaho, Louisiana, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, Texas, and Utah.