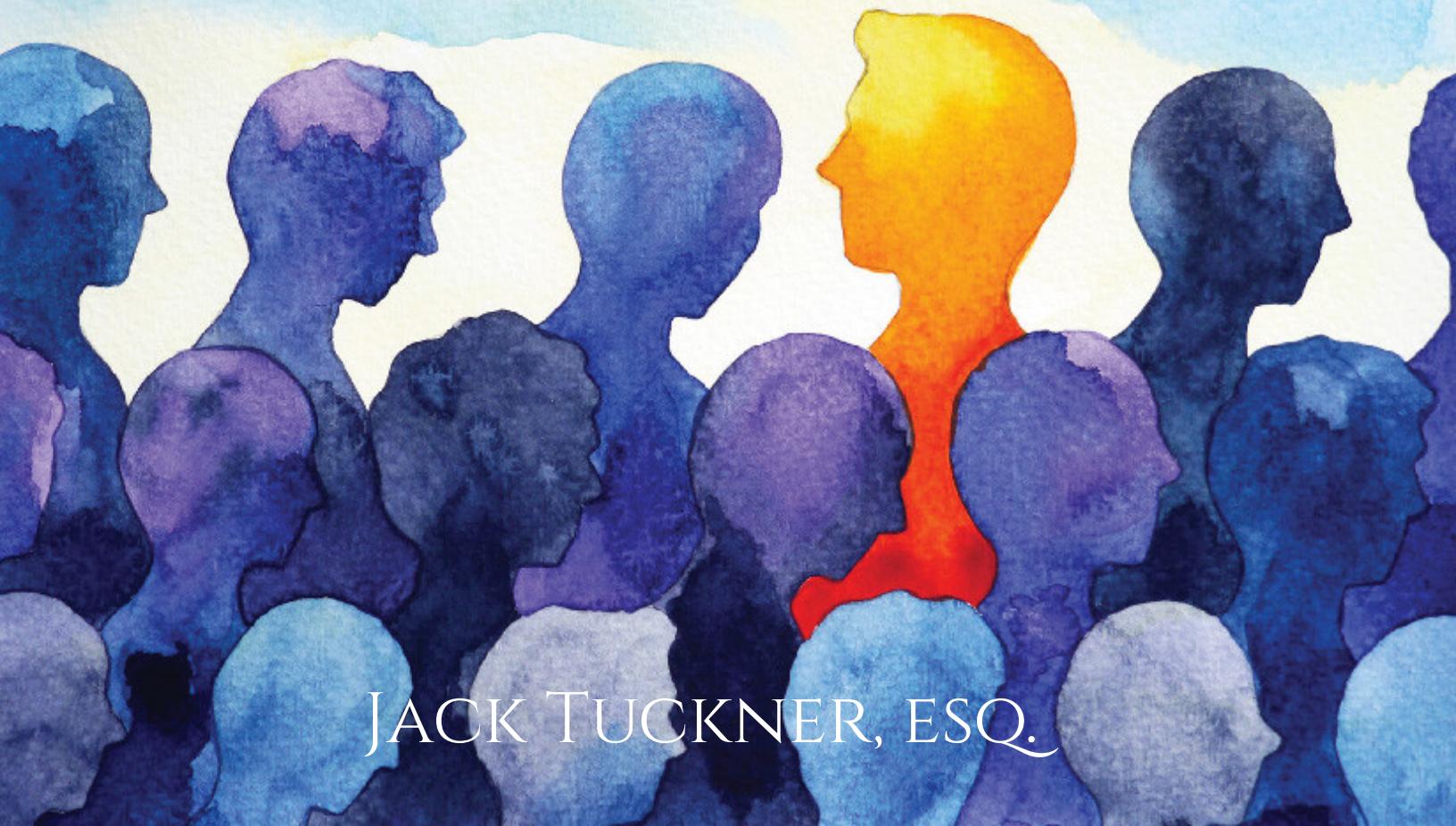


# New York Employee Rights FAQs Under COVID-19



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# NY Employee Rights Under COVID-19

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The escalating coronavirus pandemic (COVID-19) has changed the life and work situations for millions of people throughout the US. In this time of frightening medical and economic crisis, *Tuckner Sipser* is especially concerned about protecting employee rights, we have prepared a set of FAQs to explain how federal, state, and local laws can protect your job and your income.

The following is information about federal and New York State laws, please also see information about [New York City employment laws and the COVID-19 / Coronavirus pandemic](#).

# NY Employee Rights Under COVID-19

## 1. If I or a family member get sick with coronavirus, am I allowed to take time off from work?

The federal Family & Medical Leave Act allows a qualified employee\* to take up to 12 weeks of unpaid leave within a 12-month period if they or an immediate family member requires care for a "serious health condition." The FMLA also entitles a covered employee to continued health insurance benefits and requires their employer to offer them the same or equivalent position when they return to work. Qualified or covered employees are those who have worked for at least one year for the same company, have worked over 1,250 hours in the prior year (which means in essence, a full-time employee), and whose employer has at least 50 employees working within a 75-mile radius.

The [Families First Coronavirus Response Act \(FFCRA\)](#) allows all employees who work for employers of less than 500 employees to take up to **80 hours of emergency sick leave**. An employee may take emergency sick leave under the FFCRA if they are:

1. subject to quarantine or isolation order or caring for someone who is subject to a quarantine or self-isolation order;
2. advised by a health care provider to self-quarantine due to coronavirus health concerns or to care for someone who is advised to self-quarantine;
3. experiencing symptoms of coronavirus illness and are seeking a medical diagnosis;
4. caring for their child if, because of coronavirus issues, their child's school or day care has been closed or their childcare provider is unavailable.

The rate of pay will vary depending on your unique work and family circumstances: More information is available through the [Department of Labor](#) website at this link provided.

City and state laws may provide even greater protections for employees, such as in New York, where this employee rights law firm is located. See the information below on NY state and NY city additional protections.

## 2. Is my employer required to pay me for my time away from work due to the virus?

Some companies' policies provide paid leave for those who are forced to take time off in connection with a sickness or disability. For those workers, the company policy generally will control the terms of the sick or disability leave. Also, some states and cities have laws that provide employees with access to paid sick leave, such as New York (see below).

The FFCRA allows employees of employers of less than 500 employees to take up to 80 hours of emergency sick leave for certain qualifying reasons, such as:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (due to a federal, state, or city government order or advice of a health care provider), and/or the employee is experiencing coronavirus symptoms and seeking a medical diagnosis from a doctor; or
- Two weeks (up to 80 hours) of **paid sick leave** at two-thirds of the employee's regular rate of pay because the employee is unable to work because of a *bona fide* need to care for an individual subject to quarantine (due to a federal, state, or city government order or advice of a health care provider), or, to care for a child under the age of 18 whose school or child care provider is closed or unavailable for reasons related to the coronavirus.

These payments are subject to certain limits and maximum benefits. For more information check this [Department of Labor](#) link.

City and state laws may provide even greater protections for employees, such as the protections provided by New York, where this law firm is based. Please see the information on NY below.

# New York State Employee Rights

In addition to federal law, employees who work in New York State are entitled to protections under New York state laws, such as:

### New York Paid Family Leave

New York State's Paid Family Leave Law guarantees employees time away from work to care for a seriously ill family member (including a child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent), or to address certain military family needs. The law protects full-time and part-time employees of ALL private employers (regardless of your immigration or citizenship status). To be eligible for paid leave employees must have worked for the employer for six months, or 175 days if an employee works less than 20 hours per week.

In 2020, the law provides employees up to ten weeks of paid family leave; in 2021 it will increase to 12 weeks of leave. Currently in 2020, employees can receive 60% of their average weekly pay, up to \$840.70. per week. Employees have the right to maintain their healthcare coverage during the paid family leave period, and to return to work when the leave is over.

In response to the COVID-19 pandemic, New York State enacted a new law that provides a very narrow paid leave expansion for workers who are subject to a government-issued orders of quarantine or isolation and who are physically unable to work remotely, or who are parents of minor children subject to a government-ordered quarantine or isolation.

Eligible workers must exhaust any emergency sick leave that the employer provides first. The new law requires employers to pay full wages up to \$840.70 per week. Employees earning more than that may be eligible for additional benefits through a temporary disability insurance program.

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**Note: Being forced to work from home at this time due to Governor's Cuomo's Executive Order does not counts as an order of quarantine or isolation, unfortunately.**

## New York State Human Rights Law

New York State's Human Rights Law protects employees, independent contractors, subcontractors, consultants, vendors or others providing services in the workplace, including domestic workers.

Employers cannot harass or discriminate against any individual based on their disability or perceived disability, sex, age, race, creed, color, national origin, sexual orientation, gender identity or expression, domestic violence victim status, military status, pre-disposing genetic characteristics, familial status, or marital status. Employees are also protected from retaliation if they stand up for themselves and oppose harassment or discrimination based on these statuses.

## New York Labor Law

The New York Labor Law sets the minimum wage that employers must pay employees, and it requires overtime payments for certain employees who work more than 40 hours a week, and the law also sets when certain rest breaks must be provided. New York State also has a Domestic Workers' Bill of Rights which extends pay and rest period protections to these employees, too.

Employers cannot retaliate against employees who seek to be paid properly under the law, including for overtime and in many cases, salaried employees are misclassified as non-exempt employees and told they are not entitled to overtime pay when indeed they are. New York provides additional wage and hour protections beyond the federal FSLA, so contact Jack Tuckner at *Tuckner Sipser*, if you have questions about whether you're being properly paid.

## New York City Employee Rights

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In addition to federal and state laws, employees who work in New York City are entitled to protections under various NYC laws such as:

## NYC Paid Safe and Sick Leave Law

Under the NYC Paid Safe and Sick Leave Law, employers with five or more employees who work more than 80 hours per calendar year in New York City must provide up to 40 hours of paid leave for employees who need so-called "safe" or sick leave. Employers with fewer than five employees must provide 40 hours of unpaid leave. Employees may begin to use sick leave 120 days after their first day of employment. The sick leave law covers employees regardless of immigration or citizenship status.

Employees have the right to use sick leave for the care and treatment of themselves, a family member, or a person whose relationship (or association) with the employee is so close that they are the equivalent of family. **Employers must allow employees to use sick leave when a public official closes their business, the worker's child's school, or childcare provider due to a public health emergency.** "**Safe leave**" can be used by employees when they or a family member has been the victim of an act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking, so that the victimized employee may figure out what do next and focus on their welfare safety without fear of losing their job and income

Employers are not permitted to require medical documentation from employees until they have been absent for more than three consecutive days. Employers may not engage in or threaten retaliation against employees who assert these rights. Retaliatory actions include firing, or any other intimidating act or statement that punishes an employee, or is likely to deter her from exercising her rights under the law to safe or sick leave.

## NYC Human Rights Law

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NYC's Human Rights Law prohibits discrimination based on all the protected categories mentioned above in the NYS Human Rights Law section, but it also extends protections to employees based on gender identity and expression and unlike the federal and state laws, there are no caps on the amount of damages you can win if you prevail at trial. Most significantly during this pandemic crisis, the NYC Human Rights Law offers the broadest protections for employees with disabilities, and the law puts the onus on the employer to "reasonably accommodate" the employee's illness and the definition of disability is expansive and inclusive, covering all "**any physical, medical, mental or psychological impairment, or a history or record of such impairment,**" and your employer MUST engage in a "cooperative dialogue" with its employees who state they are unwell, and they must be flexible with their employees unless the company can demonstrate such flexibility will cause an "undue hardship" on the company, which is a high bar to meet. The NYC Human Rights Law is one of the most liberal, expansive and employee-oriented anti-discrimination laws in the United States.

### NYC Fair Workweek Law

Under NYC law, fast food and retail employers must give workers advance notice of work schedules, including schedule changes. In some cases, if those schedules change, then the employer must pay the employee a premium wage. Fast food employers must give employees premium pay for schedule changes with less than 14 days' notice. That includes cases when the employer requires an employee to cover the shift of a sick coworker, or when the employer cancels scheduled shifts. Retail employers cannot require an employee to work additional hours with less than 72 hour's notice, and they can't cancel or reduce an employee's hours with less than 72 hours' notice, unless the employer obtains written consent from the employee. These requirements do not apply to retailers when the City or State declares a state of emergency that closes the business, such as is the case during this deepening coronavirus crisis.

### NYC Temporary Schedule Change Law

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Employees can ask to make temporary changes to their schedules for certain personal events twice per year, totaling no more than two days. These two days are in addition to an employee's accrued sick leave. Temporary schedule changes can include working remotely, arriving to work later than required or leaving later than is normally the case, or using short-term unpaid leave.

These are pretty bleak and challenging times for all New Yorkers and Americans. Whatever the state of the economy or our nation on the other side of this pandemic, employers are still not permitted and will never be permitted to unlawfully discriminate against employees based on illegal factors, or deprive employees of their livelihoods, compensation and the dignity of work.

## **3. Can my employer fire me if I get sick with coronavirus?**

The FMLA and other federal and state laws protect qualified individuals who cannot work because of a serious health condition, such as the Americans with Disabilities Act. In certain cases, an employee who has an underlying condition worsened by the coronavirus (e.g., emphysema or diabetes) may be considered disabled under the ADA.

The ADA defines a disability as a physical or mental impairment that substantially limits one or more major life activities, a history or record of such an impairment, or a perception by others of such an impairment. Besides prohibiting discrimination against people with disabilities, the ADA requires employers to provide reasonable accommodations for such individuals. State and city laws sometimes grant additional protections for people with disabilities or serious health conditions, such as the state and city disability laws in New York. See the information below.

### 4. Do I have the right to work from home if I'm uncomfortable reporting to work, even if I'm not sick? And can I work from home to care for my kids who are at home because of school closings?

In general, there is no federal or state-granted legal right to work from home, as employers have the right to set the terms of your employment. If an underlying disability places you at high risk for coronavirus, you may then have the right to work remotely as a *reasonable accommodation*, depending on whether working from home is reasonable under the circumstances.

The FFCRA permits employees to take emergency sick leave to care for a child whose school or day care has closed, or where childcare is otherwise unavailable because of coronavirus protections, etc. In addition, employees may be entitled to up to an **additional 10 weeks of leave at two-thirds the employee's regular rate of pay if an employee is unable to work due to bona fide childcare needs related to COVID-19**. These payments are subject to the new limits on maximum benefits and more information is available through the [Department of Labor](#) site.

### 5. Can my employer force me to work from home if I don't want to work from home, and can my employer prevent me from traveling for personal or for business reasons?

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By definition, employers may set the terms and conditions of your employment, which includes your work location, as long as they comply with the law. That means that your company can require you to work from home due to a reason such as business need or for safety and health reasons, but an employer may not force certain people to work from home because of a perceived or actual disability if it would be akin to an adverse employment action based on a disability. In other words, if working from home was similar to a demotion, or if it resulted in lower pay for only certain workers, those employees may be protected by federal, state, or city laws that prohibit discrimination based on a disability (or when they *perceive* you as disabled).

Your employer can prohibit you from traveling for business reasons because work-related travel is considered a condition of your employment, yet they cannot prevent you from traveling for personal reasons on your own time, although keep in mind that they may be able to prevent you from working in the office if you recently traveled, due to health and safety concerns.

## **6. If my employer requires me to work from home, am I entitled to be paid for that time?**

Absolutely yes. if you are a salaried employee and you work any portion of the week, you must be paid your regular full weekly pay. Hourly employees (non-exempt employees) who work from home are entitled to be paid for all hours worked, including overtime hours.

City and state laws may provide even greater protections for employees.

## **7. Is my employer required to pay me for the cost setting up my home office?**

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Maybe. Whether you are entitled to reimbursement depends on your state or city and your rate of pay. If the expenses you incur in setting up your home office causes your weekly pay to drop below the minimum wage, you would likely have a claim under the federal [Fair Labor Standards Act \(FLSA\)](#) and NY's Wage Theft and Labor Laws, as well.

## 8. What happens if my employer lays me off or cuts my hours?

There are specific laws that protect employees from mass layoffs. For example, under the federal Worker Adjustment and Retraining Notification Act (WARN), companies must give affected employees 60-days advanced written notice of the mass layoff, and worksite or plant closing. Some states such as New York have their own WARN Act.

Several states and cities require an employer to provide schedules in advance and must pay employees when the company reduces or add work shifts. Some laws also require extra pay when employers require workers to work split shifts, and if you are laid off or have your hours reduced, you may be entitled to unemployment benefits, which vary according to each jurisdiction.

If your employer offers you a severance agreement, it is important to consult with an attorney in your jurisdiction about the rights you have and what rights you are forfeiting by signing the severance agreement contract, sometimes called a separation agreement.

## 9. Can an employer withdraw an offer letter because of the coronavirus?

As a matter of straight contract law, any offer can be withdrawn before it is accepted. Once the offer is accepted unconditionally (before being withdrawn), it becomes a binding agreement.

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An employer can withdraw a job offer for almost any reason, for discriminatory reasons (such as finding out you're pregnant, or because of your race, religion, etc.). Even so, most offer letters do not provide much in the way of contractual rights for the employee (it's not a binding contract); and most employment agreements provide that the employment is "at will," which means that you can quit whenever you want and the employer can fire the employee at any time and for any reason, even before the employment relations has begun.

Under any employment agreement, the main issue is whether the employee has any enforceable rights when they're fired without cause (such as a required notice period, severance pay, accrued bonus payment, or any vested benefit, stock, 401K or other accrued deferred compensation benefit).

Regarding a person with a disability, an offer may be revoked if the employer can show that the prospective employee would be "unable to perform the essential functions of the job (with or without reasonable accommodation)" or the prospective employee poses a "significant risk of causing substantial harm" to others. So, this may eventually play out with COVID-19 cases in unforeseen ways, as we've never encountered such mass illness in this country to date.

### **10. What if my employer is discriminating against me because of my race, ethnicity, or national origin due to fear of the coronavirus?**

As the coronavirus pandemic has escalated, some employees have reported negative treatment from managers and coworkers because of their race, ethnicity, or national origin. This type of abuse and mistreatment is discriminatory, and it's illegal under federal, state and city laws.

Workplace discrimination can take many forms, including name calling, demeaning comments, stereotyping, racial slurs and adverse employment actions such as poor performance reviews, demotion, failure to promote or termination. If you believe you are being discriminated against because of a protected characteristic such as your race, contact an employment discrimination attorney immediately to understand your rights and legal options.

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These laws also prohibit employers from retaliating against employees because they have complained about their workplace rights. Retaliation includes any threat, discipline, firing, demotion, suspension, or reduction in hours, or any other negative (adverse) employment action, when those actions are caused by an employee's efforts to exercise their workplace civil rights.

# JACK TUCKNER, ESQ.

## PARTNER CO-FOUNDER

Jack Tuckner is a women's rights in the workplace attorney and founding partner of Tuckner, Sipser, perhaps the only law firm in the country concentrating on workplace gender rights. His practice is focused on helping working women combat sexual harassment, pregnancy discrimination, and other discrimination and illegal treatment faced by women, including illegal pay disparity, gender discrimination, maternity leave matters, unlawful relation and illegal termination.

Jack has fought for women's rights and against the unequal and wrongful treatment of women in the workplace. In doing so, Jack has gained a reputation for feminist activism and the pursuit of gender justice in pay for all women. He has been a pioneer in fighting against the many forms of pregnancy discrimination including the illegal actions taken by employers to try to force women to quit their jobs, and the denial of workplace promotion and other benefits.

For more info: [womensrightsny.com/team/jack-tuckner](http://womensrightsny.com/team/jack-tuckner)