
Coates' Canons Blog: Does a Local Shelter-in-Place Order Qualify as an Isolation or Quarantine Order for the Purposes of the Emergency Paid Sick Leave Act?

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Article: <https://canons.sog.unc.edu/does-a-local-shelter-in-place-order-qualify-as-an-isolation-or-quarantine-order-for-the-purposes-of-the-emergency-paid-sick-leave-act/>

This entry was posted on March 27, 2020 and is filed under Compensation & Benefits, Emergency Restrictions, Employment, Featured Posts Related To COVID-19, General Local Government (Miscellaneous), Miscellaneous

An ever-increasing number of North Carolina cities and counties are imposing a combination of emergency restrictions and prohibitions under local state of emergency declarations referred to as “shelter in place” (sometimes called “stay at home”) to keep the COVID-19 virus from spreading. Employees in these cities are asking whether a shelter in place declaration means that they qualify for the new emergency paid sick leave provided by the Families First Coronavirus Response Act because one of the qualifying reasons for the new paid leave is that an employee is subject to an isolation or quarantine order. The answer to their question is “no.” Shelter in place declarations are not equivalent to an isolation or quarantine order and does not make them eligible for emergency paid sick leave.

Background

As of the day of publication, many of North Carolina's larger counties and cities have imposed shelter in place restrictions, including Mecklenburg County, Wake County and the cities of Winston-Salem and Durham. The towns of Chapel Hill, Carrboro and Hillsborough have also imposed shelter in place restrictions in coordination with each other and with Orange County. The legal requirements for imposing shelter in place restrictions are set forth in an excellent blog post by my colleague Norma Houston, which you may find here. The shelter in place declarations of each individual jurisdiction differ in their details, but generally they include restrictions on the number and movement of people in public places and prohibitions on the operation of offices, businesses, and other places not deemed to provide essential services. Most shelter in place declarations tell citizens to remain in their homes or other places of shelter unless they need to purchase groceries or prescription medications, obtain medical care or go to work at a place that provides essential services.

Employees who would prefer not to have to be in the workplace during the COVID-19 pandemic, as well as those who do not provide essential services but cannot work from home and are effectively or formally furloughed, may not have enough accrued paid leave under their employer's leave policies to see them through what could be a lengthy period. So it is perhaps natural to wonder whether the imposition of a shelter in place declaration might make them eligible for the new emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA) since one of the qualifying reasons for the new leave is when an employee is subject to an isolation or quarantine order.

The Emergency Paid Sick Leave Act section of the FFCRA

The Emergency Paid Sick Leave Act (the “Sick Leave Act”) is Division E of the Families First Act. It provides 80 hours of paid leave to any employee (full-time, new hire, part-time or temporary) who:

1. is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. has been advised by their healthcare provider to self-quarantine because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19;
3. is showing symptoms of COVID-19 and is seeking but has not yet received a medical diagnosis;
4. is caring for someone subject to a federal, state or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons; or
5. is caring for his or her son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of a COVID-19 related reason.

The Sick Leave Act doesn't define "quarantine or isolation order," but it doesn't have to because those terms have very specific meaning in the context of public health law, as my colleague Jill Moore has explained in another excellent blog post.

The Meaning of "Quarantine" and "Isolation"

To quote Jill,

Isolation limits the freedom of movement or action of a person who is infected with a communicable disease or condition, or who is reasonably suspected of being infected In North Carolina, either a local health director or the State Health Director may issue an isolation order to an infected person Isolation can occur in an individual's home, unless the individual needs to be in a health care facility to have his or her medical needs met.

Quarantine limits the freedom of movement or action of a person who has been exposed to a communicable disease or condition, or who is reasonably suspected of having been exposed Either a local health director or the State Health Director may issue a quarantine order, but as with isolation orders, in practice an order is usually issued by a local health director. (Italics added)

The term "quarantine" is sometimes used colloquially to refer to actions that affect geographic areas rather than individuals Our state's definition of quarantine refers primarily to individuals who are at risk, either because of exposure to a communicable disease, or lack of immunization against a vaccine-preventable disease.

Jill's blog post is about North Carolina state law while the Emergency Sick Leave Act is a federal law. Federal law defines isolation and quarantine similarly in its regulatory sections for interstate quarantines. See 42 CFR § 70.1.

So a stay at home declaration cannot be an isolation or quarantine order, because those orders require reason to believe the person(s) subject to them to is either infected (isolation) or exposed (quarantine). Stay at home declarations are directed at the entire population: healthy, exposed, and sick.

Conclusion

From this, it follows that employees who are not the individual subject of a formal order of quarantine or isolation, are not infected with COVID-19 and/or have not been exposed to COVID-19 cannot use FFCRA emergency paid sick leave if they cannot work due to a shelter in place declaration. This would true whether the shelter in place declaration is local or statewide, should Governor Cooper issue a shelter in place Executive Order in the future.

Employees who are unable to work due to a shelter in place declaration may use instead any paid sick, vacation or personal leave that they have accrued under their employer's policies. Employees who are nonexempt under the Fair Labor Standards Act may also use any accrued compensatory time that they have earned in place of cash overtime.

Links

- www.congress.gov/bill/116th-congress/house-bill/6201/text
- www.law.cornell.edu/cfr/text/42/70.1