

Labor & Employment Alert

New York State Paid Sick Leave

On April 2, 2020, Governor Andrew Cuomo signed the FY2021 New York State budget. The newly enacted budget includes legislation that will require all employers to provide paid sick leave to its New York employees permanently. Employees in New York State will begin accruing sick leave on September 30, 2020, but are not entitled to use it until January 1, 2021. Employees who use sick leave must be returned to the same position they held immediately prior to the use of sick leave with the same pay and other terms and conditions of employment.

Required Amounts of Leave

The amount of sick leave available to an employee depends on their employer's total number of employees (globally, not just in New York) and net income:

- employers with 4 or fewer employees and a net income of less than \$1 million in the prior tax year must provide employees with up to 40 hours of unpaid sick leave.
- employers with 4 or fewer employees and a net income of greater than \$1 million in the prior tax year and employers with between 5 and 99 employees must provide each employee with up to 40 hours of paid sick leave per year.
- employers with 100 or more employees will provide up to 56 hours of paid sick leave per year.

Accrual and Carryover of Hours

Sick time accrues at a rate of 1 hour for every 30 hours worked — the same accrual rate as the current New York City Earned Safe and Sick Time Act and the Westchester County Earned Sick Leave Law. Employers with over 100 employers who were already required to comply with either the NYC or Westchester laws should note that although the accrual rate under the State law remains the same as the local laws, the cap on hours that may be accrued annually by an employee will increase from 40 to 56. The new law also specifically states that it shall not prevent a city with a population of one million or more from enacting and enforcing local laws or ordinances that meet or exceed the requirements to provide leave set forth in this law.

Unused sick leave carries over to the following year, though employers with fewer than 100 employees may limit the use of sick leave to 40 hours per year and employers with 100 or more employees may limit the use of sick leave to 56 hours per year. Employers may also require employees to take sick leave in minimum 4 hour increments.

Sick leave does not have to be paid out at termination.

Permitted Usage

The permissible uses for sick leave are broad and include both traditional sick leave as well as safe leave. The following reasons for accessing sick leave are covered by the new law:

- An employee's or employee's family member's mental or physical illness, injury, or health condition, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that the employee requests the sick leave;
- The employee's or employee's family member's diagnosis, care, or treatment of a mental or physical illness, injury or health condition, or for preventive care; or
- An absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking:
 - to obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - to participate in safety planning, to relocate temporarily or permanently, or to take other actions to increase the safety of the employee or employee's family members;
 - to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding;
 - to file a complaint or domestic incident report with law enforcement;
 - to meet with a district attorney's office;
 - to enroll children in a new school; or
 - to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

The law defines "family member" as an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, and the child or parent of an employee's spouse or domestic partner. "Parent" is defined as a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child" is defined as biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

Confidentiality

Employers are prohibited from conditioning use of leave on an employee's disclosure of confidential information about the employee's or family member's health condition or domestic violence/sexual assault details. The law is silent on an employer's ability to ask for documentation or verification that leave has been used for a permissible purpose.

Record Keeping

Employers are required to keep contemporaneous records showing the amount of sick leave provided to each employee under the law. Sick leave records must be maintained for a minimum of 6 years.

If any employee requests, either verbally or in writing, a summary of the amount of sick leave they have accrued and/or used during their tenure, the employer must provide that information to the employee within three business days.



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