

HR COMPLIANCE BULLETIN

New York State Enacts Paid Sick Leave Law

New York state has enacted a [sick leave law](#) that, depending on their size, requires employers to provide between 40 and 56 hours of paid leave per year for reasons relating to the health and safety of the employee or the employee's family. Employers with fewer than five employees and an annual income no greater than \$1 million may satisfy the law's leave requirement by providing unpaid leave of 40 hours annually.

Employees begin accruing leave on Sept. 30, 2020, but may not use the leave until Jan. 1, 2021. Leave is accrued at the rate of one hour for every 30 hours worked; the law contains frontloading and carryover provisions.

Employers with leave policies that equal or exceed the requirements of the sick leave law need not provide additional leave to their employees. The sick leave law does not affect municipal leave laws in effect on Sept. 30, 2020, and cities with populations of at least 1 million may enact laws that meet or exceed the requirements of the new law.

Employers must restore employees to their former positions when they return from leave, and employers are prohibited from retaliating against employees exercising their right to leave.

The state department of labor has issued [FAQs](#) on a [website](#) dedicated to the law.

Action Steps

Employers should review their leave policies to ensure compliance with the new law. Employers are also advised to watch for regulations from the New York Labor Commissioner, as they may include additional details and requirements about the law.

Highlights

Sick Leave Mandate

New York state's sick leave law provides employees with 40 – 56 hours of sick leave per year, depending on employer size.

For Small Employers, Leave May Be Unpaid

Employers with fewer than five employees and no more than \$1 million in income may provide leave as unpaid.

Some Policies Exempted

Employers whose policies meet or exceed the leave requirements need not provide additional leave.

Important Dates

Sept. 30, 2020

New York sick leave law becomes effective, and employees begin to accrue leave.

Jan. 1, 2021

Employees may begin taking sick leave under the law.



Covered Employers

The law's sick leave requirements apply to all New York employers, including any person, corporation, limited liability company or association employing any individual in any occupation, industry, trade, business or service. In a joint ownership situation, both owners are responsible for carrying out the law. However, only employers with at least five employees or more than \$1 million in annual net income must provide sick leave as paid. Furthermore, the amount of leave required is determined by the employer's size, as set forth below.

| Employer Size | Sick Leave Requirement |
|---|--------------------------------|
| <ul style="list-style-type: none">Fewer than 5 employeesAnnual net income of \$1 million or less | Up to 40 unpaid hours annually |
| <ul style="list-style-type: none">Fewer than 5 employeesAnnual net income over \$1 million | Up to 40 paid hours annually |
| <ul style="list-style-type: none">5 – 99 employees | Up to 40 paid hours annually |
| <ul style="list-style-type: none">100 or more employees | Up to 56 paid hours annually |

In calculating their size, employers should:

- Count their employees (across all locations in New York state) for the 12-month period from Jan. 1 through Dec. 31, and
- Use their annual net income from the previous tax year.

Covered Employees

All private sector workers in New York State are covered under the law, regardless of industry, occupation, part-time status, overtime-exempt status or seasonal status. The immigration status of a worker has no effect on their eligibility for leave benefits under the law, which also covers domestic workers.

Employees who telecommute are covered for the hours they physically work in New York state, even if the employer is physically located outside the state.

Accrual and Carryover

Employees accrue one hour of sick leave for every 30 hours worked, up to the yearly maximum as set forth in the chart above. The accrual begins at the start of their employment or Sept. 30, 2020, whichever is later. However, employees do not earn sick leave while they are on sick leave, or for payments that are not for hours worked, such as bonuses or "subject-to-call" time. On the other hand, employees do accrue leave for time that is considered "hours worked," including on-call time, training time and travel time.

Employers may front-load the total amount of sick leave to employees at the beginning of the year, but they may not later reduce that amount based on the employee's actual hours worked during the year.



Employees may carry over unused sick leave to the following calendar year. For the purposes of accrual, use and carryover of leave, “calendar year” means the 12-month period from Jan. 1 through Dec. 31, or a regular and consecutive 12-month period, as determined by the employer.

Use of Sick Leave

Waiting Period

There is no minimum period of employment before an employee can use sick leave. However, unless an employer front-loads sick leave at the beginning of a calendar year or otherwise has a sick leave policy that exceeds the requirements of the law, an employee would have to work at least 30 hours before accruing any sick leave.

Amount of Leave

Employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year, and employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year.

Employers may set a reasonable minimum increment for the use of sick leave, but it cannot be more than four hours.

Reasons for Leave

Employers must provide accrued sick leave for the following purposes related to health conditions:

- An employee’s or employee’s family member’s mental or physical illness, injury or health condition (regardless of whether the illness, injury or health condition has been diagnosed or requires medical care at the time the employee requests leave); or
- The diagnosis, care or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, an employee or an employee's family member.

Employees may use sick leave for doctor, dentist, eye doctor, or other routine appointments when they require treatment for a condition or for preventive medical care.

According to guidance from the state department of labor, whether employees may use sick leave when their employer has been ordered to close temporarily due to a public health emergency depends on the type of health emergency involved, taking into account the risk of contagion and other health considerations. Sick leave under the paid sick leave law is separate and additional to the [quarantine leave](#) for employees subject to a precautionary or mandatory order of quarantine or isolation related to COVID-19, and use of COVID-19 leave does not impact or otherwise utilize an employee’s paid sick leave accruals or usage.

Employers must also provide accrued sick leave for any of the following reasons when the employee or employee's family member has been the victim of domestic violence (as defined by state law), a family offense, sexual offense, stalking or human trafficking:

- To obtain services from a domestic violence shelter, rape crisis center or other services program;

“Family Member” means an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; or the child or parent of an employee's spouse or domestic partner.

“Parent” means a biological, foster, step- or adoptive parent, a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

“Child” means a biological, adopted or foster child, a legal ward or a child of an employee standing in loco parentis.



- To participate in safety planning, temporarily or permanently relocate, or 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.

Leave may be used even if the police have not been contacted or the perpetrator convicted.

Confidentiality Rules

An employer may not require, as a condition of providing sick leave:

- The disclosure of confidential medical information
- Information relating to absence from work due to domestic violence, a sexual offense, stalking or human trafficking

Reinstatement

Employees returning to work after taking sick leave must have their position, pay, and terms and conditions of employment restored to what they were before the leave.

Retaliation

Employers are prohibited from discharging, threatening, penalizing, or otherwise discriminating or retaliating against any employee because the employee has exercised his or her right to request and use sick leave.

Telecommuting

According to [FAQs](#) issued by the New York Department of Labor on the law, employers cannot require employees to work from home or telecommute instead of taking sick leave, but they may offer employees those alternative options. Employees who choose working from home or telecommuting retain the paid or unpaid sick leave they have accrued.

Compensation

Employees using paid sick leave must be paid at their regular rate of pay or the applicable minimum wage under state law, whichever is greater. Employers may not take a tip allowance as a credit against the minimum wage requirements of their industry for leave time. However, they are not required to pay employees for lost tips or gratuities.

Employees who are paid at more than one rate of pay must be paid for leave under the law at the weighted average of those rates, meaning the total regular pay divided by the total hours worked in the week. See the New York Department of Labor's [FAQs](#) on the law for more information.



Employees using leave during time that would have been overtime if worked are not required to be paid at an overtime rate. Employers are not required to pay employees for unused sick leave when their employment ends.

Employee Notice

There is no specified notice or time period requirement under the law. The employee must, however, make an oral or written request for leave before taking the leave, unless the employer does not require this notice.

Alternate Leave Policies

Employers with policies that meet or exceed the requirements of the sick leave law are not required to provide employees with additional leave.

Collective bargaining agreements entered into on or after Sept. 30, 2020, may provide comparable paid days off, in the form of leave, compensation, other employee benefits or a combination of the three, in place of leave required by the sick leave law. However, the agreement must acknowledge the sick leave law by specifically referencing New York Labor Law Section 196-b, and should specifically identify any benefits deemed comparable to the leave in the law.

Recordkeeping

Employers must provide a summary of the amounts of sick leave accrued and used in the current and previous calendar years by any employee who requests the information. The information must be provided within three business days.

Employers must keep records for six years showing the weekly amount of sick leave provided to each employee.

Interaction With Local Leave Laws

Cities with a population of at least one million may enact and enforce local laws meeting or exceeding the requirements of the sick leave law. In addition, municipal paid sick leave programs in effect as of Sept. 30, 2020, are not affected by the sick leave law. Benefits remain available under the Westchester County law that provides domestic workers with up to 40 hours of paid sick leave per year, regardless of the employer's size.

Employees may choose to use sick leave during paid family leave only if their employer allows it. Taking sick leave at the same time as paid family leave may allow the employee to receive their full salary for all or part of the leave. However, an employee cannot receive more than their full wages while receiving paid family leave benefits.

New York paid sick leave operates independently from other state and federal leave requirements and must be paid in addition to them.

Penalties

Under New York law, failure to provide required paid sick leave is treated as a failure to pay employee wages. Violators are subject to civil actions and criminal penalties, including but not limited to wages, liquidated damages and penalties in an amount double the amount due.