

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 of the employee or the employee's family. Employers with fewer than five employees and an annual income under \$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.

Action Steps

Employers should review their leave policies before the sick leave law's Sept. 30, 2020, effective date to ensure compliance. If necessary, new employer policies should be implemented to meet the law's mandates.

The New York Labor Commissioner is authorized to issue regulations to implement the law. Employers are advised to watch for these regulations, which may include additional details and requirements.

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 less 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.

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Covered Employers

All New York employers must provide sick leave to their employees. However, only employers with at least five employees or \$1 million in annual net income must provide that 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 for the 12-month period from Jan. 1 through Dec. 31, and
- Use their annual net income from the previous tax year.

Accrual and Carryover

Employees accrue one hour of sick leave for every 30 hours worked, beginning at the start of their employment or Sept. 30, 2020, whichever is later. Employers may frontload 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

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.

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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.

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;
- 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.

“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.

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.

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 are not required to pay employees for unused sick leave when their employment ends.

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.

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.