

New York State Enacts Permanent Paid Sick Leave Law

April 13, 2020

On April 3, Governor Cuomo signed into law the State Budget (Senate Bill S7506B), which includes a provision that amends the New York Labor Law to require many employers to provide paid sick leave (“PSL”). The law takes effect 180 days after the enactment (September 30, 2020), and employees will begin accruing leave on that date; however, employees may not begin to use accrued leave until January 1, 2021. Unlike many laws passed in recent weeks in the wake of the COVID-19 pandemic, this paid sick leave law will have permanent effect.

Amount of Leave

The amount of leave an employer is required to provide varies based on the size of the employer’s workforce in any calendar year and the amount of net income in the previous tax year:

- Employers with four or fewer employees and net income of \$1 million or less in the previous tax year are required to provide 40 hours of unpaid sick leave per calendar year.
- Employers with four or fewer employees and net income of greater than \$1 million in the previous tax year are required to provide 40 hours of paid sick leave per calendar year.
- Employers with five to 99 employees must provide 40 hours of paid sick leave per calendar year.
- Employers with 100 or more employees must provide 56 hours of paid sick leave per calendar year.

For the purposes of calculating the number of employees, a “calendar year” is defined as the 12-month period from January 1 through December 31. For the purposes of using and accruing leave, a “calendar year” means either January 1 through December 31 or any regular and consecutive 12-month period.

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- **Accrual and Frontloading:** Leave must accrue at a rate of at least one hour per 30 hours worked; however, an employer may choose to provide employees with the entire amount of leave at the beginning of the year. An employer who chooses to frontload leave may not later reduce the amount of leave if the employee does not work sufficient hours to accrue the amount provided.

Use of Sick Leave

- **Reason for Leave:** An employee may use sick leave for the following reasons:
 - mental or physical illness, injury or health condition of an employee or the employee's family member (regardless of whether a diagnosis has been obtained);
 - diagnosis, care or treatment of a mental or physical illness injury, or health condition of, or the need for medical diagnosis of, or preventative care for, the employee or employee's family member; or
 - absence when an employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking and seeks or obtains services, including from a shelter, attorney or law enforcement, or takes "any other action to ensure the health or safety of the employee or family member or to protect those who associate or work with the employee."
- **Covered Family Members:** A family member is defined as 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" 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." Additionally, "child" is defined as a biological, adopted or foster child, a legal ward or a child of an employee standing in loco parentis.
- **Proof of Qualifying Reason:** An employer may not require the disclosure of confidential information as a condition of providing leave, such as information relating to a mental or physical illness, injury or health condition of the employee or the employee's family member.
- **Minimum Increment:** An employer may set a reasonable minimum increment at which leave must be used; however, this increment may not exceed four hours.
- **Compensation:** Compensation must be at the employee's regular rate or the minimum wage, whichever is greater.

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- **Carry Over:** Unused sick leave will be carried over. However, employers with fewer than 100 employees may limit an employee's use of sick leave to 40 hours per year, and employers with 100 or more employees may limit use to 56 hours per year.
 - **No Payout at Separation:** Employers are not required to pay employees for unused sick leave upon an employee's voluntary or involuntary separation from employment.

Interaction with Other Leave

- **Employer Policy:** An employer that already provides a sick leave or paid time off policy that meets or exceeds the leave provided by this law need not provide additional leave as a result of this law. The employer's policy must also satisfy the accrual, carryover and use requirements of the law.
- **Local Paid Sick Leave Laws:** This law does not prevent a city or municipality with a population of one million or more from enforcing local laws or ordinances which meet or exceed the standards or requirements of this law. The law also provides that any paid leave benefits provided by a municipal corporation existing as of the effective date of the law will remain in effect.
 - New York City and Westchester County have existing sick leave laws.
- **Collective Bargaining Agreements:** Employers who enter into collective bargaining agreements on or after the effective date of this law must provide benefits comparable to those provided under the law. These agreements must specifically acknowledge the provisions of the law.

Job Protections

- **Retaliation:** An employer may not retaliate or discriminate against or otherwise penalize any employee for requesting or using sick leave.
- **Job Protections:** An employee must be restored to his or her position with the same pay and terms and conditions of employment upon return from leave.

Documentation

- An employer is required to track the amount of sick leave provided to each employee and maintain this information in its payroll records for six years.

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- Upon request by an employee, the employer must provide within three business days a summary of the amount of sick leave accrued and used by the requesting employee.

Action Items for Employers

- New York employers should begin assessing whether any modifications to existing sick leave policies will be required to comply with the new law.
- The New York State Department of Labor Commissioner is authorized to adopt regulations and guidance to effectuate the law. We expect that further regulations or guidance will be issued prior to September 30, 2020. Employers should monitor for and review any such guidance before implementing an updated sick leave policy.

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