



Employment, Labor, and Employee Benefits

New York Paid Sick Leave Legislation

Syracuse ♦ Ithaca ♦ New York City

September 2020

Following New York's enactment of temporary COVID-19 emergency paid sick leave benefits in March, New York enacted permanent paid sick leave legislation on April 3, 2020. Governor Cuomo signed the State Budget (Senate Bill S7506B) into law, which includes a provision that amends the New York Labor Law to require employers to provide paid sick leave (new Labor Law § 196-b). This law takes effect on September 30, 2020. Notably, for the first time, New York is requiring private employers to provide all employees with paid sick leave when they or a family member are sick. The law applies to all employees and does not distinguish between full and part-time employees. Government agencies are excluded from this law.

The amount of leave an employer is required to provide depends on the employer's workforce size in any calendar year (defined as the 12-month period from January 1 through December 31) and the amount of net income in the previous tax year:

- Employers with 4 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 4 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 5 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.

The law defines sick leave broadly to include a range of health and safety reasons for an employee or an employee's family member (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). These include:

- 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 or requires medical care at the time the employee requests sick leave;
- 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.

Employers may not require employees to disclose confidential information regarding their sick leave request as a condition of providing leave.

Employee leave will accrue at a rate of at least one hour per 30 hours worked. However, an employer may choose to front load the leave, providing employees with the entire amount of leave at the beginning of the year. An employer who chooses to front load leave may not later reduce the amount of leave if the employee does not actually work sufficient hours during that calendar year to accrue the amount previously provided to them.

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Employees will begin accruing leave on September 30, 2020, or when employment begins, whichever is later, however, employees may not begin to use accrued leave until January 1, 2021. To calculate use and accrual of leave, a “calendar year” means either January 1 through December 31 or any regular and consecutive 12-month period, as determined by an employer. An employer may set a reasonable minimum increment at which leave must be used, which may not exceed four hours.

Compensation must be paid at the employee’s regular rate or the minimum wage, whichever is greater.

Under the law, unused sick leave carries over to the following calendar year. However, the law provides employers with an ability to cap carryover: 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. Upon an employee’s separation from employment, employers are not required to pay employees for unused sick leave.

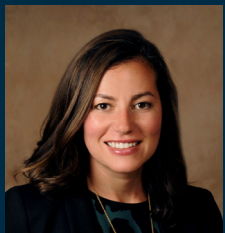
The law also adds documentation requirements. Employers are required to track the amount of sick leave provided to each employee and maintain this information in its payroll records for six years. Upon verbal or written request by an employee, the employer must provide a summary of the amount of employee's sick leave accrued and used within three business days.

The law also contains anti-retaliation and discrimination provisions: an employer may not retaliate or discriminate against or otherwise penalize any employee for requesting or using sick leave, and must be restored to his or her position with the same pay and terms and conditions of employment upon return from leave. A variety of penalties can be assessed against an employer that discriminates or retaliates against an employee for using leave under the law, including civil penalties ranging from \$1,000 to \$20,000, injunction, liquidated damages, front pay and payment for lost compensation, costs and reasonable attorneys' fees.

Employers who enter into collective bargaining agreements on or after September 30, 2020 must provide benefits comparable to those provided under the law, and these agreements must specifically acknowledge the provisions of the law.

New York employers should analyze current sick leave policies to see if any updates are required to satisfy the new law's leave, accrual, carryover and use requirements. Employers that already provide a sick leave or paid time off policy that meets or exceeds the leave provided by this law do not need to provide additional leave. In addition, employers should consider how to communicate any changes to employees, update recordkeeping policies, coordinate changes with their payroll provider and train personnel managing sick leave on the requirements of the law. Employers should monitor for regulations and guidance published by the New York Department of Labor.

If we can provide you with additional insight and information regarding changing employment laws related to the current coronavirus pandemic and how to address internal issues at your business, please contact :



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Labor, Employment & Employee Benefits

Bousquet Holstein PLLC provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives.

Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



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