

## New York State Employees Entitled to Use Protected Sick Leave Starting January 1st

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*Source: Saiber Employment Law Alert*

New York State's Mandatory Paid Sick Leave law went into effect on September 30, 2020, enabling employees to begin accruing protected sick time off pursuant to the State law. Employees can begin to use their accrued time off starting January 1, 2021. Employers cannot retaliate against an employee in any way for exercising the right to use sick leave. In addition, employees must be restored to their position of employment as it had been prior to taking any sick leave. Guidance regarding the New York State Paid Sick Leave law can be found at <https://www.ny.gov/new-york-paid-sick-leave/new-york-paid-sick-leave>.

### **Covered employers**

All private-sector employees in New York State are covered by this law, regardless of industry, occupation, part-time status, or job classification. This may include employers with employees covered by collective bargaining agreements. Employees covered by collective bargaining agreements entered into after September 30, 2020 are entitled to time off pursuant to the New York State paid sick leave law unless they are provided with a comparable amount of time off and the collective bargaining agreement specifically acknowledges the law. Federal, state, and local government employees are the only employees not covered by this law.

### **Amount of Leave**

Employers with 5-99 employees must provide up to 40 hours of paid sick leave and employers with 100 or more employees must provide up to 56 hours of paid sick leave. The law requires employers with less than five employees and less than \$1 million in net income (in the previous tax year) to provide up to 40 hours of **unpaid** sick leave per calendar year.

### **Accrual and Carryover**

Employees are immediately eligible to accrue leave based on hours worked at a minimum rate of 1 hour for every 30 hours worked. The time off may also be frontloaded.

Unused sick leave must be carried over to the next calendar year. However, employers may limit employees' use of sick leave to the maximum number of hours that the employee is entitled to use within any calendar year (40 or 56).

### **Use of Sick Leave**

Employees may begin using accrued leave on January 1, 2021. Thereafter, all new employees may use accrued leave immediately and employers are not permitted to impose waiting periods before new employees can use such leave.

If the employer permits, an employee can choose to use sick leave during Paid Family Leave (PFL). Using sick leave at the same time as PFL may allow the employee to receive his or her full salary for all or part of the leave but an employee cannot receive more than his or her full wages while receiving PFL benefits.

Sick Leave: Employee may use accrued time off:

- For mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave; or
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care (including doctor, dentist, eye doctor, or other routine appointments).

Safe Leave: Employees may also use accrued leave for Safe Leave for absence from work when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking. Safe Leave may be used to:

- Obtain services from a domestic violence shelter, rape crisis center, or other services program;
- Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
- 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;
- File a complaint or domestic incident report with law enforcement; or to meet with a district attorney's office;
- Enroll children in a new school; or
- 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.

## **Recordkeeping**

Employers must keep payroll records for six years. These records must include the amount of sick leave accrued and used by each employee on a weekly basis.

At the request of an employee, employers are required to provide, within three business days, a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

## **Penalties**

The failure to provide employee benefits such as sick leave, is equivalent to a failure to pay employee wages. Therefore, the failure to provide employees with sick leave as required under the law may subject the employer to civil/administrative actions and/or criminal penalties. The

owners of businesses may be held jointly and severally responsible for the failure to comply with the law.

### **Existing Policies and New York City Paid Safe and Sick Time law**

Existing policies may be in compliance if they provide paid time off that meets or exceeds the accrual, carryover, and use requirements of the law. Thus, many New York City employers covered by the City's existing Paid Safe and Sick Leave law may already have policies in place providing for the time off. However, the City recently revised its law based on the State law and has imposed new and additional requirements on the use of paid safe and sick leave.

<https://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page> All New York City employers should review their policies to ensure compliance under both the City's and State's safe and sick leave laws.