



NEW YORK'S NEW SICK LEAVE LAW

Under new legislation all New York private employers are required to provide sick leave to employees. Under New York's Sick Leave Law (the "Law"), the amount of an employee's sick leave and whether it is paid or unpaid depends on the size and/or the net income of the employer. The Law takes effect, and covered employees will be entitled to begin accruing leave time, on September 30, 2020. However, employees may be restricted from utilizing the accrued leave until January 1, 2021.

Amount of Sick Leave

Under the Law:

- Employers with four or less employees and a net income of less than \$1 million in the prior tax year must provide employees with up to 40 hours of unpaid sick leave per calendar year.
- Employers with between 5 and 99 employees as well as employers with 4 or less employees and a net income of over \$1 million in the prior tax year are required to provide each employee with up to 40 hours of paid leave per calendar year.
- Employers with 100 or more employees must provide employees up to 56 hours of paid leave per calendar year.

For purposes of computing the number of employees, a "calendar year" under the Law means the twelve-month period from January first through December thirty-first. The Law further provides that for all other purposes, a calendar year "shall either mean the twelve-month period from January first through December thirty-first, or a regular and consecutive twelve-month period, as determined by the employer."

If an employer already provides sick leave or time off at least equal to the amount required under the Law, the employer is not required to provide additional time off, so long as the leave may be utilized for the same reasons required by the Law (which are described below).

Employees must accrue sick leave at a rate of at least one hour of sick leave for every 30 hours worked, which is the same accrual rate provided in the New York City Earned Safe and Sick Time Act. Under the Law, employers alternatively may fulfill their legal obligation by "front loading" the sick leave at the beginning of the calendar year as long as they do not reduce or revoke any leave based on the hours that an employee actually worked. Additionally, under the Law, employers are not required to pay employees for unused sick leave upon an employee's voluntary or involuntary separation from employment.

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Use of Sick Leave

Sick leave under the Law may be used for the following reasons:

1. For a mental or physical illness, injury or health condition of an employee or such employee's family member, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time such leave is requested. Under the Law, a "family member" includes an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner. The Law further provides that a "parent" includes a biological, foster, step- or adopted parent, or a legal guardian of an employee. The Law's definition of "child" includes a biological, adopted or foster child and a legal ward.
2. For the diagnosis, care or treatment of any mental or physical illness, injury or health condition, or need for medical diagnosis of, or preventative care for, such employee or such employee's family member.
3. For a variety of reasons related to absences from work when the employee or the employee's family member has been a victim of domestic violence or another family offense, sexual offense, stalking, or human trafficking.

Other Provisions of the Law

Other provisions of the Law include the following:

- Employees may begin to take accrued sick leave on January 1, 2021 and may do so in partial-day increments. Employers may set a reasonable minimum increment of sick time use provided it is no more than four hours.
- Employers must allow employees to carry over unused sick leave to the next calendar year. However, employers may limit employees to 40 or 56 hours of sick leave- as determined above - in a particular calendar year.
- Employers are not required to pay out unused sick leave at any time, including separation from employment.
- Upon return from leave, an employee must be restored to the same position that the employee held prior to the sick leave with the same pay and other terms and conditions of employment.
- Employers are also required to provide employees with a summary of the amount of sick leave they have accrued and used in the current calendar year and/or any previous calendar year within three business days of a request by an employee. Additionally, employer payroll records must reflect the amount of sick leave provided to an employee for each week worked. The employer also must maintain records of sick leave provided to all employees for six years.
- Employers may not require disclosure of confidential information from an employee as a condition of taking sick leave.
- Collective bargaining agreements entered into on or after the effective date of the Law must provide sick leave benefits that are at least "comparable" to those provided for under the Law and such agreements "must specifically acknowledge" the provisions of the Law.

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- The Law expressly states that it does not preempt or diminish existing city or county sick leave laws and therefore employers covered by any such additional laws must continue to provide leave to employees that meets or exceeds the requirements of both statewide and local laws.
- The Law provides that an employer may not retaliate or discriminate against or otherwise penalize any employee for requesting or using sick leave.

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