



# EMPLOYMENT LAW ALERT

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## New York State Sick Leave Law Takes Effect

Earlier this year, New York adopted a statewide paid sick leave law ("Sick Leave Law") as part of its fiscal year 2021 budget. For the first time in New York State, employers of all sizes are required to provide paid or unpaid sick leave to employees.

### Sick Leave Available

The amount of sick leave time that an employee is entitled to receive, and whether that time is paid or unpaid, depends upon the size of the employer. The Sick Leave Law provides that:

- Employers with 4 or fewer 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**.
- Employers with between 5 and 99 employees and employers with 4 or fewer employees and a net income of greater than \$1 million in the prior tax year must provide each employee with up to **40 hours of paid sick leave per year**.
- Employers with 100 or more employees will provide up to **56 hours of paid sick leave per year**.

To determine an employer's size under the Sick Leave Law, a calendar year is defined as the 12-month period from January 1 to December 31. For the purpose of using and accruing paid or unpaid leave under the law, a calendar year means the 12-month period from January 1 through December 31, or an employer may choose an alternate regular and consecutive 12-month period.

Employees accrue sick leave at a rate of 1 hour for every 30 hours worked. Employers may also fulfill their obligation by front loading employees' annual allotment of sick leave time at the beginning of each year. While under this new law employees are not entitled to take sick leave until **January 1, 2021**, employees began accruing time on **September 30, 2020**.

### Use of Sick Leave

Beginning January 1, 2021, employees may take sick leave under the new law for the following covered reasons:

- Employee's mental or physical illness, or injury, or diagnosis, care, treatment, or preventive care for employee's mental or physical illness or injury;

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- Covered family member's mental or physical illness or injury or diagnosis, care, treatment, or preventive care for a covered family member's mental or physical illness or injury;
- Absences related to employee's status as a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking; or
- Absences related to a covered family member's status as a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking.

For purposes of sick leave, a "family member" includes an employee's child (including foster child, legal ward, or equivalent legal relationship), spouse, domestic partner, parent (including a step- or foster parent, legal guardian, or equivalent legal relationship), sibling, grandchild, grandparent, and the child or parent of an employee's spouse or domestic partner.

Employers may set a reasonable minimum increment of time in which leave must be used. However, the minimum increment may not exceed 4 hours.

In granting employees time under the Sick Leave Law, employers may not require the disclosure of confidential information, such as information relating to a mental or physical illness, injury or health condition of the employee or family member, as a condition of granting the leave.

### **Carryover and Payout**

Employees must be allowed to carry over their unused sick leave to the next calendar year, but an employer may limit the amount of sick leave that can be used in a calendar year to 40 hours (employers with fewer than 100 employees) or 56 hours (employers with 100 or more employees). Employers are not required to pay an employee for unused sick leave upon termination of employment.

### **Interaction with Other Leaves**

While the Labor Commissioner has the power to adopt regulations and to issue guidance, such guidance has not yet been issued regarding this new law. It is currently unclear how this law will interplay with the New York COVID-19 leave law.

This new law does not prevent a city or local municipality with a population of one million or more from enforcing local laws or ordinances that meet or exceed the standard of this law, like New York City and Westchester.



Employers should move swiftly in updating their employee handbooks and timekeeping procedures to comply with this new law. Employers should also closely monitor any updates from the New York State Department of Labor as we expect further guidance to be issued.

**For additional information, please contact**

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