



September 10, 2020

New York Sick Leave Law Soon to Take Effect

On April 3, 2020, Governor Andrew Cuomo signed into law a statewide sick leave requirement, mandating that employers provide sick leave to all employees. (“Sick Leave Law”) This is different from, and in addition to, the emergency COVID-19 legislation signed on March 18, 2020, guaranteeing sick leave for employees who have been quarantined as a result of COVID-19.

The NY Sick Leave Law amends the New York Labor Law by adding a section 196-b, and takes effect on September 30, 2020. Although employers must allow employees to begin accruing paid sick leave on September 30, 2020, employers are not required to allow employees to use sick leave until January 1, 2021. The Sick Leave law applies to all private employers regardless of size, although the level of leave required depends on the employer’s size and income, as discussed below.

Sick Leave Requirements

Every employer is required to provide its employees with sick leave as follows:

Small Employers

- Employers with four (4) or fewer employees in a calendar year, with a net income of \$1 million or less in the previous tax year, must provide their employees with up to forty (40) hours of unpaid sick leave per calendar year.
- Employers with four (4) or fewer employees in a calendar year, with a net income of greater than \$1 million in the previous tax year, must provide their employees with up to forty (40) hours of paid sick leave per calendar year.

Medium Employers

- Employers with between 5 – 99 employees in a calendar year must provide their employees with up to forty (40) hours of paid sick leave per calendar year.

Large Employers

- Employers with 100 or more employees in a calendar year must provide their employees with up to fifty-six (56) hours of paid sick leave per calendar year.

Accrual and Use of Sick Leave

Beginning September 30, 2020, sick leave must be accrued at a minimum rate of 1 hour per every 30 hours worked. Employers may elect to provide employees with their total sick leave allotment at the beginning of the year. However, if they elect to do so, they cannot reduce or deduct any unused sick leave at the end of the year.

Eligibility for Taking Leave

Beginning January 1, 2020, employees may use sick leave for the following purposes:

- For the employee or employee's family member's mental or physical illness, injury or health condition;
- For the diagnosis, care or treatment of an employee or employee's family member's mental or physical illness, injury or health condition;
- For an absence from work when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking, in order to:
 - Obtain services from a domestic violence shelter, rape crisis center or other program;
 - To participate in safety planning, relocate, or other safety actions;
 - To meet with an attorney or other social services provider;
 - To file a complaint or domestic incident report;
 - To meet with a district attorney's office;
 - To enroll children in a new school; or
 - To take any other action necessary to ensure the health and safety of the employee or employee's family member.

Use of Sick Leave

Employers may set a reasonable minimum increment for the use of sick leave, which must not exceed four (4) hours.

Employees must receive paid leave at his or her regular rate of pay, or the applicable minimum wage, whichever is greater.

Employers are prohibited from discharging, threatening, or otherwise discriminating or retaliating against employees for requesting or using sick leave. Upon return from sick leave taken under the statute, employees must be restored to their same position and upon the same terms and conditions of employment as existed prior to taking leave.

Notice and Recordkeeping

Employers must provide employees with a summary of the amount of sick leave accrued and used in the calendar year, upon an oral or written request. The information must be provided to the employee within three (3) business days of such request.

Carryover Requirements

Any unused sick leave shall be carried over to the following calendar year. However, employers may limit the use of sick leave per calendar year as follows:

- Employers with less than 100 employees may limit use of sick leave to 40 hours per calendar year.
- Employers with 100 or more employees may limit use of sick leave to 56 hours per calendar year.

Moreover, employers are not required to pay employees for unused sick leave upon the employee's termination, resignation, retirement, or other separation from employment.

Interaction with Company Leave

Employers who have adopted a sick leave policy or time off policy are not required to provide any additional sick leave under the Sick Leave Law, provided the employer's policy meets or exceeds the amount of leave, accrual, carryover and use requirements under the statute.

Implications for Collective Bargaining Agreements

- **Comparable Benefits**. On or after September 30, 2020, employers may enter into a collective bargaining agreement ("CBA") to provide comparable benefits in the form of leave, compensation, other employee benefits, or some other combination thereof, in lieu of the leave provided by the statute. However, the agreement must specifically acknowledge the provisions in the statute.

- **Terms and Conditions of Sick Leave**. Employers may also negotiate with unions on different terms and conditions of sick leave than what is required by the statute, provided the agreement specifically acknowledges the provisions in the statute.

Takeaway

Employers that do not currently have a sick leave policy should begin to develop a policy compliant with the Sick Leave Law by September 30, 2020.

Employers that already provide their employees with sick leave benefits should review their policy to determine whether it meets or exceeds the requirements of the new Sick Leave Law in terms of leave time, accrual, carryover and use requirements.

Employers should consider the new sick leave requirements when negotiating a CBA that goes into effect on or after September 30, 2020.

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If you have any questions regarding this alert, please do not hesitate to contact us.

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