

NEW YORK CITY'S PAID SICK LEAVE LAW ANSWERS TO EMPLOYER QUESTIONS



**NYC
WORKS
BETTER**
with
**PAID SICK
LEAVE**



NYC[™]
Consumer
Affairs

THE DEPARTMENT OF CONSUMER AFFAIRS (DCA) ENFORCES NYC'S PAID SICK LEAVE LAW.

Under the Law:

- If you are a for-profit or nonprofit employer with five or more employees, you must provide paid sick leave. If you have four or fewer employees, you must also provide sick leave, but you are not required to pay for sick leave.
- You must give each employee the required Notice of Employee Rights in English and, if available on the DCA website, the employee's primary language.

Since the Law took effect on April 1, 2014, DCA has worked with businesses to address questions and mediate complaints. This guide provides answers to employers' most frequently asked questions to help you better understand the Law.

Q. WHICH OF MY EMPLOYEES ARE COVERED BY THE PAID SICK LEAVE LAW?

A. Most employees who work in New York City are covered by the Paid Sick Leave Law. *Even if your business is located outside of New York City, you must provide sick leave to employees who work more than 80 hours per calendar year in New York City.* The Law covers full-time, part-time, temporary, per diem, transitional jobs program, and undocumented workers. It also covers workers who live outside of New York City but work in New York City. Making deliveries or pickups in New York City is considered to be performing work in New York City.

If you aren't sure about employees covered by a collective bargaining agreement, contact the union. Also visit nyc.gov/PaidSickLeave for additional FAQs, which cover collective bargaining agreements.

TIP You must pay for sick leave no later than the next regular payroll period after sick leave was used by the employee, unless you asked for and have not received required documentation.



Q. HOW MUCH SICK LEAVE DO I HAVE TO GIVE MY EMPLOYEES EVERY YEAR?

- A.** You must provide employees with up to 40 hours of sick leave every year. Employees must earn, or accrue, at least one hour of sick leave for every 30 hours worked, up to 40 hours of sick leave per year. The rate of accrual and the amount of sick leave are the same for all employees, including full-time and part-time employees. Unused sick leave of up to 40 hours can be carried over to the next calendar year. Front-loading sick leave can free you from keeping track of your employees' sick leave accruals. If you choose this route, make sure at least 40 hours are available for each employee on the first day of each calendar year.



TIP If you employ a domestic worker who has worked for you for more than one year, you must provide paid sick leave. Domestic workers get up to two days of paid sick leave every year. This is in addition to the up to three days of paid rest to which they are entitled under New York State Labor Law.

Q. MY EMPLOYEE TOOK TIME OFF BECAUSE S/HE WAS SICK BUT DOESN'T HAVE A DOCTOR'S NOTE. MAY I DEMAND ONE?

- A.** You *cannot* require the employee to provide documentation from a licensed health care provider until s/he uses more than three consecutive workdays as sick leave. If you require documentation from a health care provider as permitted by Law, you may not require the documentation to specify the nature of the employee's illness or condition. The employee has a minimum of seven days after returning to work to produce documentation.

You *can* require the employee to give you a signed statement that the absence was for an authorized purpose under the Law. Visit nyc.gov/PaidSickLeave for a model form that you can provide employees.

Q. HOW MUCH NOTICE MAY I DEMAND IF AN EMPLOYEE NEEDS TO TAKE A SICK DAY? MAY I EVER DENY A REQUEST?

A. If an employee knows in advance s/he will need to take sick leave, you can require up to seven days advance notice, as long as you have written policies that you provide to your employees that include this requirement. If the need for sick leave is unforeseeable, you can require an employee to give notice as soon as it's reasonably possible. Again, you must have written sick leave policies that include this requirement. If an employee does not comply with written notice policies that you distributed, you can deny use of sick leave as long as the notice required under the circumstances was reasonable.

Guidance on sick leave policies and also model forms are available at nyc.gov/PaidSickLeave.



TIP You may not require an employee to disclose any personal health information. You must keep health information about an employee or an employee's family member obtained solely because of this Law confidential unless the employee permits disclosure or disclosure is required by law.



TIP DCA has developed an easy-to-use tool to help you keep track of employees' hours worked and sick leave used and automatically calculate accruals and end-of-the-year carryover of sick leave. Download the Sick Leave Timekeeping Tool from our website.

Q. I ALREADY PROVIDE VACATION DAYS. DOESN'T THAT COUNT?

A. To comply with the Paid Sick Leave Law, if you provide your employees vacation or personal leave, you do not need to provide additional time for sick leave, as long as your policies meet the Law's minimum requirements and do not impose any additional restrictions on the use of sick leave. This means that your employees' existing leave is earned at the same rate and can be used for the same authorized reasons, including for the care and treatment of all family members defined under the Law.

If an employee has already accrued leave under a leave policy that was in existence prior to the effective date of the Paid Sick Leave Law, those accruals may still be subject to the requirements of New York State Labor Law § 198-c regarding benefits and wage supplements. For further guidance regarding leave policies under the New York State Labor Law, contact the New York State Department of Labor, Division of Labor Standards.

Q. CAN I DISCIPLINE AN EMPLOYEE WHO MISUSES SICK LEAVE?

A. Yes, but only if an employee uses sick leave for a purpose other than those set forth in the Law.



TIP Even if your leave policies meet the requirements of the Paid Sick Leave Law, you still have to provide employees with the required Notice of Employee Rights. You can provide the notice to each employee personally, including in new hire materials, or by regular mail or email. Saving signed copies of the notice or email receipts is a good way to document that you gave employees the required notice.

Q. WHAT ARE POSSIBLE SIGNS OF MISUSE OF SICK LEAVE?

- A. Indications of using sick leave for purposes other than those described in the Law include, but are not limited to:
- Repeated use of unscheduled sick leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation, or payday
 - Taking leave on days when other leave has been denied
 - A pattern of taking leave on days when the employee is scheduled to work a shift or perform duties perceived as undesirable

Evidence that an employee engaged in an activity that is not consistent with the employee being sick or with the employee using sick leave for a preventive medical appointment may also indicate misuse of sick leave.

RETALIATION AND INTERFERENCE ARE AGAINST THE LAW.

It is illegal to interfere with investigations or to retaliate against employees who exercise their rights under the Paid Sick Leave Law. If DCA determines that you retaliated against an employee, you may be responsible not only for lost wages and benefits to the employee and fines to DCA, but also may be required to take certain actions, including rehiring an employee who has been unlawfully terminated.

QUESTIONS?

You can contact DCA in the following ways:

- Go to **nyc.gov/PaidSickLeave**. You can get the required Notice of Employee Rights and an information sheet for employers in 26 languages, the Paid Sick Leave Law and Rules, and learn about employer events.
- Visit us at 42 Broadway, 11th Floor, in Manhattan.
- **Call 311** and ask to be transferred to DCA for employer paid sick leave information.
- Email us at **paidsickleave@dca.nyc.gov**. For your convenience, we can also “live chat” with you via computer at **nyc.gov/BusinessToolbox**.



Bill de Blasio
Mayor

**Consumer
Affairs**

Lorelei Salas
Commissioner



@NYCDCA #PAIDSICKLEAVE



Printed on 30%
post consumer
recycled paper

07/2016