

New York Enacts Mandatory Sick Leave Law

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Amidst the COVID-19 melee, the New York legislature passed its Budget for Fiscal Year 2021, which included a mandatory paid sick leave bill, signed by Governor Cuomo on April 3, 2020.

For better or worse, this enactment will usher in “the strongest Paid Sick Leave in the nation.”

The Paid Sick Leave law will take effect 180 days after its signing, on September 30, 2020, although employees may not begin to use accrued sick leave until January 1, 2021. New York employers should begin to think ahead about how the Paid Sick Leave law, summarized below, will impact their current leave policies.

How Much Leave?

The new NY Paid Sick Leave law requires different amounts of leave based on employer size and revenue.

- 0-4 employees: 40 hours **unpaid** sick leave each year
- 0-4 employees and net income of \$1 million: 40 hours **paid** sick leave each year
- 5-99 employees: 40 hours **paid** sick leave each year
- 100 or more employees: 56 hours of **paid** sick leave each year

Employees will accrue sick leave at a rate of (not less than) 1 hour for every 30 hours worked, and will receive the greater of “regular rate of pay,” or the applicable minimum wage. Accrual will begin at the later of September 30, 2020, or an employee’s first day of employment.

Permitted Uses

On or after January 1, 2021, at the request of an employee, employers will provide leave for any of the following reasons:

- An employee’s or employee’s family member’s mental or physical illness, injury, or health condition (whether diagnosed or not);
- An employee or employee’s family members diagnosis, care or treatment of a mental or physical illness, injury or health condition; and
- 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.

The Paid Sick Leave law opts for broad coverage, including expansive definitions of “family

member," "parent," and "child":

- "Family member" is defined to mean 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.
- "Parent" is defined to mean biological, foster, step or adoptive parent, or a legal guardian of an employee, or a person who stood *in loco parentis* when the employee was a minor child.
- "Child" is defined to mean biological, adopted or foster child, a legal ward, or a child of an employee standing *in loco parentis*.

Effect on Existing Policies

In addition to the accrual and use requirements, the following provisions may impact current policies:

- Employers cannot require "disclosure of confidential information" related to an employee's, or an employee's family member's, mental or physical illness, injury or health condition as a condition for taking leave. Likewise, employers cannot request "confidential information" related to an employee's absence related to domestic violence.
- Employers can set a reasonable minimum increment for the use of sick leave (not to exceed 4 hours).
- Employees can carry over a certain amount of unused leave from year-to-year:
 - Employers with 0-100 employees can limit the use of sick leave to 40 hours per calendar year.
 - Employers with 100 or more employees can limit the use of sick leave to 56 hours per calendar year.
- Upon request, employers must provide a summary of hours accrued and used by the employee in the current calendar year, or in a previous calendar year. The employer must provide the response within 3 days of the request.
- Following the culmination of leave, the employee must be restored to the same position, with the same pay and conditions of employment.

The Department of Labor is expected to issue guidance and adopt regulations to effectuate the law and (hopefully) provide employers some clarity regarding accrual, use and carryover prior to the September 30 effective date.

If an employer already has a sick leave policy that equals or exceeds the Paid Sick Leave law (as to, amount, accrual, carryover, and use), there is no need to provide any additional sick leave. But, where employers are currently providing less than what is provided by the new law, they will need to revise their policies accordingly.

We understand employers are currently focused on dealing with complex employment issues brought on by the pandemic, however, we recommend all NY employers providing less than what is required by the new law to review their policies and consult with counsel well in advance of the September 30 effective date.