



**July 2020**

**NYS Sick Leave**

On April 3, 2020, the 2021 New York State budget was signed by the Governor and included a new statewide sick leave requirement. The new leave provisions are an amendment to the NY Labor Law (Art. 6 §196-b) (the “NYS Sick Leave Law”) and require New York employers of all sizes to provide paid or unpaid sick leave to be used for medical and safety-related reasons. The NYS Sick Leave Law is effective September 30, 2020.

There are some inconsistencies between the requirements of the new NYS Sick Leave Law and the requirements of the NYC Earned Safe and Sick Time Act (NYC ESSTA) for NYC employers. The NYS Sick Leave Law directs the NY Department of Labor to adopt regulations and issue guidance, and we are hopeful that NYS will provide guidance to employers regarding how to address these inconsistencies.

When do employees begin to accrue sick leave under the NYS Sick Leave Law?	September 30, 2020 or the commencement of employment, whichever is later.
When can employees begin to take accrued sick leave under the NYS Sick Leave Law?	January 1, 2021
Which employers are covered by the NYS Sick Leave Law?	The NYS Sick Leave law applies to every employer.
Which employees are covered by the NYS Sick Leave Law?	The NYS Sick Leave law applies to any employee.
What are the leave requirements for employers with 4 or fewer employees in any calendar year (January 1 – December 31) with a net income of \$1,000,000 or less in the previous tax year?	Employees accrue up to 40 hours of unpaid sick leave in each calendar year.
What are the leave requirements for employers with 4 or fewer employees in any calendar year (January 1 – December 31) with a	Employees accrue up to 40 hours of paid sick leave in each calendar year.



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net income greater than \$1,000,000 in the previous tax year?	
What are the leave requirements for employers with between 5-99 employees in any calendar year (January 1 – December 31)?	Employees accrue up to 40 hours of paid sick leave in each calendar year.
What are the leave requirements for employers with 100+ employees in any calendar year (January 1 – December 31)?	Employees accrue up to 56 hours of paid sick leave in each calendar year.
What is the accrual rate for employees to earn sick leave?	Employees earn 1 hour for every 30 hours worked.
Can an employer “front load” sick leave?	An employer may elect to provide the total amount of sick leave at the beginning of the calendar year (any 12-month period determined by employer), provided that the employer cannot reduce or revoke any sick leave based on the hours actually worked during that calendar year.
What are the permitted reasons for sick leave?	<p>An employee may take sick leave for any of the following reasons:</p> <p>(i) for a mental or physical illness, injury, or health condition of such 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 that such employee requests such leave;</p> <p>(ii) for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or</p> <p>(iii) for an absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic</p>



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	<p>violence, a family offense, sexual offense, stalking, or human trafficking:</p> <ul style="list-style-type: none"><li>(a) to obtain services from a domestic violence shelter, rape crisis center, or other services program;</li><li>(b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;</li><li>(c) to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;</li><li>(d) to file a complaint or domestic incident report with law enforcement;</li><li>(e) to meet with a district attorney's office;</li><li>(f) to enroll children in a new school; or</li><li>(g) to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.</li></ul> <p>The reasons outlined above in (iii)(a)-(g) must be related to the domestic violence, family offense, sexual offense, stalking, or human trafficking. Provided further that a person who has committed such domestic violence, family offense, sexual offense, stalking, or human trafficking shall not be eligible for leave for situations in which the person committed such offense and was not a victim, notwithstanding any family relationship.</p>
<p>Who is a "family member"?</p>	<p>A "family member" is defined as 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.</p>



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	<p>A "parent" is defined as a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood <i>in loco parentis</i> when the employee was a minor child.</p> <p>A "child" is defined as a biological, adopted or foster child, a legal ward, or a child of an employee standing <i>in loco parentis</i>.</p>
How does an employee request sick leave?	An employee may take sick leave upon oral or written request.
What disclosures can be required in order for an employee to take sick leave?	An employer may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of such employee or such employee's family member, or information relating to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave.
Is there a "minimum increment" for the use of sick leave?	An employer may set a reasonable minimum increment for the use of sick leave which shall not exceed 4 hours.
How much is the employee paid?	Paid sick leave must be paid at the regular rate of pay or minimum wage, whichever is greater.
Can sick leave be carried over?	<p>An employee's unused sick leave shall be carried over to the following calendar year, provided, however, that:</p> <p>(i) an employer with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year; and</p> <p>(ii) an employer with 100+ employees may limit the use of sick leave to 56 hours per calendar year.</p>
Do you have to pay-out unused leave upon an employee's resignation or termination?	No. The NYS Sick Leave Law does not require an employer to pay an employee for unused sick leave upon such employee's termination, resignation, retirement, or other separation from employment.



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<p>Does the NYS Sick Leave Law provide job protection?</p>	<p>Yes. Upon return to work following any sick leave, the employee shall be restored to the same position with the same pay and other terms and conditions.</p>
<p>Does the NYS Sick Leave Law provide other protections?</p>	<p>The law prohibits an employer from discharging, threatening, penalizing, or in any other manner discriminating or retaliating against an employee because such employee has exercised his/her rights, including, but not limited to, requesting sick leave and using sick leave.</p>
<p>What are the recordkeeping and other requirements of the NYS Sick Leave Law?</p>	<p>Employer must preserve for not less than 6 years payroll records showing amount of sick leave provided to each employee.</p> <p>Upon the oral or written request of an employee, an employer shall provide a summary of the amounts of sick leave accrued and used by such employee in the current calendar year and/or any previous calendar year. The employer shall provide such information to the employee within 3 business days of such request.</p>
<p>How does the NYS Sick Leave Law interact with NYC ESSTA?</p>	<p>The NYS Sick Leave Law states that an employer is not required to provide any additional sick leave if the employer has adopted a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements and satisfies the accrual, carryover and use requirements of the NYS Sick Leave Law.</p> <p>The NYS Sick Leave Law states that it does not prevent a city with a population of 1 million or more from enacting or enforcing any law that meets or exceeds the standards or requirements for minimum hour and use set forth in the NYS Sick Leave Law. Any paid sick leave benefits provided by a sick leave program enforced by a municipal corporation in effect as of the effective date shall not be diminished or limited as a result of the enactment of the NYS Sick Leave Law.</p>



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	<p>The Commissioner of Labor may adopt regulations and issue guidance under the NYS Sick Leave Law, which may include standards for the accrual, use, payment and employee eligibility of sick leave. The Department of Labor will conduct a public awareness outreach campaign to make information available on its website.</p>
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Deborah Buyer, 212-225-8483 x1, [deborah@deborahbuyerlaw.com](mailto:deborah@deborahbuyerlaw.com)  
Lydia Fan Wong, 212-225-8483 x2, [lydia@deborahbuyerlaw.com](mailto:lydia@deborahbuyerlaw.com)

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