

New York Paid Sick Leave

Latest Guidance and Lingering Concerns

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Paid “Sick” Leave Laws

- Families First Coronavirus Response Act (FFCRA)
- New York Quarantine Leave
- New York Paid Family Leave
- New York Paid Sick Leave



Unpaid “Sick” Leave Laws

- Family and Medical Leave Act (FMLA)
- Americans with Disabilities Act (ADA)
- New York Human Rights Law



Other Statutory Pay for Not Working

- Workers' Compensation
- Short-term Disability
- Unemployment

New York Paid Sick Leave

- Doesn't apply to public (governmental) employers/employees
- Accrual began September 30, 2020
- Employees may use accrued paid sick leave beginning January 1, 2021

Amount of NYS Paid Sick Leave

» “Small” Employers

- < 5 employees and net income < \$1 million: 40 hours of **unpaid** sick leave each year
- < 5 employees and net income > \$1 million: 40 hours of **paid** sick leave

» “Medium” Employers

- Between 5 and 99 employees: 40 hours of **paid** sick leave each year

» “Large” Employers

- 100+ employees: 56 hours of **paid** leave each year

Counting Employees



What the law says:

Count employees “in any calendar year,” meaning “the twelve-month period from January first through December thirty-first.”

Accrual

- At least 1 hour per 30 “hours worked”
- Full-time and part-time employees
- Employers can frontload instead

Carryover

- Employers must allow employees to carryover unused time from year-to-year
- Frontloading can make this virtually irrelevant
- Must satisfy corresponding recordkeeping requirements

Payout

- No requirement to pay unused sick leave at end of employment (or any other time)
- But must have clear policy on this
- “Seasonal employees” maintain accrued leave despite normal breaks in employment

Donating Sick Leave

- NYS DOL says employers can allow employees to donate sick leave to other employees
- Must be completely voluntary on the donating employee's part
- Could be an issue for existing sick banks, such as per union contracts

NYS Paid Sick Situations

- Absences related to mental or physical illness, injury, or health condition of either employee or an employee's family member, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time leave is requested
- Diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventative care for either the employee or an employee's own family member
- Absences related to domestic violence

Family Member

- Child
- Spouse
- Domestic Partner
- Parent
- Sibling
- Grandchild
- Grandparent
- Child/parent of spouse/domestic partner

Parent/Child

- Biological
- Foster
- Step
- Adoptive
- Legal Guardian/Ward
- Person who stood *in loco parentis* when employee was a minor child

Safe Leave

- Obtain services from a domestic violence shelter, rape crisis center, or other services program
- Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or their family members
- 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
- File a complaint or domestic incident report with law enforcement
- Meet with the district attorney's office
- Enroll children in a new school
- Take any other actions necessary to ensure the health or safety of the employee or a family member or to protect those who associate or work with the employee

Notice

- Employee only has to request sick leave before taking time off
- No minimum time required/permitted
- Employers may allow employees to use leave even without prior notice
- Can't require employee to disclose confidential medical information or information related to safe leave circumstances as condition of taking sick leave

Leave Increment

- Must be “reasonable”
- Minimum increment can’t be longer than 4 hours
- Must provide written notice of any restrictions regarding increments and total annual utilization



Rate of Pay

- Based on regular rate of pay without overtime
- Don't have to make up for lost tips, but can't apply tip credit
- Weighted average for employees with different pay rates

Return to Work

- Employees have the right to return to the same position with equal compensation after sick leave
- No retaliation for requesting or using sick leave

Unionized Workplaces

- Can negotiate an alternative to NYS requirements
- Only valid if agreement reached AFTER September 29, 2020
- Must specifically reference Labor Law Section 196-b and provide “a comparable benefit”
- NYS DOL considers leave time which has fewer restrictions on its use to be “comparable,” regardless of the label of such leave (e.g., annual or vacation time), and multiple leave benefits which meet the use requirements of this law may be combined to satisfy the “comparable benefit” requirement

Paid Family Leave Overlap



Employer Option

- Employee can use paid sick leave during Paid Family Leave only if employer allows it.
- Can't exceed regular full wages.
- Should have consistent policy to avoid discriminatory application.

New York City Paid Sick Leave

- Can simultaneously satisfy both NYS and NYS Sick Leave Laws
- If the laws conflict, must satisfy State law

Telecommuters

- Accrue time only for hours physically worked in New York State
- Potentially complicated for employees who split time in and out of the State

Recordkeeping

- Employers must keep payroll records documenting weekly sick leave accrual and usage for at least 6 years
- Upon request, must provide employee with summary of all used and accrued sick leave within 3 days

Policy Considerations

» **Accrual**

- Frontloaded vs. Weekly
- Full vs. Part-time

» **Payout**

- Separation of Employment
- Annual

» **Use**

- Minimum Increment
- Annual Limits

» **Interaction w/ Other Leaves**

- NY Paid Family Leave
- FMLA

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Thanks for your time!

Questions?

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