

Publications

All New York Employers Must Provide Sick Leave to Their Employees

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On September 30, 2020, all private sector employees in New York began to accrue sick leave under the state's new sick and safe leave law. The law covers all employees regardless of industry, occupation, part-time status, overtime exempt status, and seasonal status. An employer may satisfy the law if it has a collective bargaining agreement or an existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carryover, and use requirements provided in the law.

Amount of Leave

Leave must be accrued at a rate not less than one hour for 30 thirty hours worked. Alternatively, employers may frontload the full amount of leave at the beginning of each calendar year. Employees will receive an amount of leave per calendar year based on the size of their employer:

100 or more employees

56 hours of paid sick leave

5 to 99 employees

40 hours of paid sick leave

4 or fewer employees and net income of more than \$1 million

40 hours of paid sick leave

4 or fewer employees and net income of less than \$1 million

40 hours of unpaid sick leave

An employer with multiple business locations in New York would count the total number of employees across all locations to determine which threshold it meets.

Unused leave must be carried over to the next calendar year. However, employers may limit employee use to the number of hours that the employee is entitled to use within any calendar year (i.e., 56 hours for employers with 100 or more employees and 40 hours for employers with 99 or fewer employees). This may result in an employee maintaining a leave balance in excess of the amount they are permitted to use in any calendar year.

Reasons for Taking Leave

Employees may begin to use accrued leave after January 1, 2021. There is no specified notice or time period for notice required under the law. An employee need only provide an oral or written request to the employer before using the accrued leave. Leave may be used for reasons affecting the employee or a member of their family for whom they are providing care or assistance with care.

Sick Leave may be taken for mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave; or for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care.

Safe Leave may be taken for an absence from work when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking or human trafficking.

Using Leave

Employers are permitted to require that leave be used in minimum increments (e.g., 15 minutes, 1 hour, etc.), but may not set the minimum increment at more than 4 hours.

Employers are permitted to limit the leave taken in any year to the maximum amount required to be provided to such employee (e.g., 40 hours for midsize employers and 56 hours for large employers). Any such limitations must be put into writing and either posted or given to employees.

Employers must notify employees in writing or by posting a notice in the worksite, prior to the leave being earned, of any restrictions in their leave policy affecting the employees' use of leave, including any limitations on leave increments.

Employees will be paid their normal rate of pay for any paid leave time, or the applicable minimum wage rate, whichever is greater. No allowances or credits (e.g., tip credits) may be claimed for paid leave hours, and employers are prohibited from reducing an employee's rate of pay for sick leave hours only.

Employer Obligations

Employers must keep payroll records for 6 years which must include the amount of sick leave accrued and used by each employee on a weekly basis.

Upon request, employers are required provide, within three business days, a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

Employee Protections

An employer cannot retaliate against an employee for exercising their rights to use sick leave. Employees must be restored to their position as it had been before any sick leave was taken. An employer may take disciplinary action, including termination, against an employee who uses leave for purposes other than those provided for under the law, or who lies to their employer in connection with taking such leave.

Contact your Vorys lawyer if you have questions about the New York sick and safe law or comparable laws in other jurisdictions.