

CLIENT ALERT

New York State Enacts Paid Sick Leave Law

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New York State has recently enacted a sick leave law (the State Sick Leave Law) which will take effect on September 30, 2020. All employers in New York State will then be required to provide employees with either 40 or 56 hours of sick leave in each calendar year, depending on the size and net income of the employer. For most employers in New York State, this sick leave must be paid. Employers should take steps now and review existing sick leave and PTO policies, as employees may begin using their accrued sick leave on January 1, 2021.

Amount of Sick Leave

- Employers with at least 100 employees in any calendar year must provide employees at least 56 hours of **paid** sick leave;
- Employers with between five (5) and 99 employees in any calendar year must provide employees at least 40 hours of **paid** sick leave;
- Employers with four (4) or fewer employees in any calendar year and a net income of greater than \$1 million in the previous tax year must provide employees at least 40 hours of **paid** sick leave, and
- Employers with four (4) or fewer employees in any calendar year and a net income of \$1 million or less in the previous tax year must provide employees at least 40 hours of **unpaid** sick leave.

Rate of Pay, Accrual and the Calendar Year

Employees must be compensated for their paid sick leave at their regular rate of pay or minimum wage, whichever is greater.

Similar to the requirements under New York City's Earned Safe and Sick Time Act (New York City Sick Leave Law), employees will accrue sick leave at a rate of at least one (1) hour for every 30 hours worked beginning on the commencement of employment or September 30, 2020, whichever is later.

For the purposes of determining an employer's size, a calendar year is defined as the 12 month period from January 1 to December 31. For other purposes, including the employee's use of sick leave, a calendar year can mean any other regular, consecutive 12-month period, as determined by an employer.

Covered Reasons for Taking Leave

Sick leave may be taken for an employee's or employee's covered family member's physical or mental illness, injury, or health condition regardless of whether it has been diagnosed or requires medical care at the time the employee requests the leave. Sick leave may also be taken for purposes generally characterized as "safe leave" meant to protect victims of domestic violence, family offense, sexual offense, stalking or human trafficking, and other reasons relating to care of an employee and his or her family.

Prohibition Against Discrimination, Retaliation and the Disclosure of Confidential Information

Discrimination and retaliation against employees that request or use sick leave is strictly prohibited and employees must be restored to the same position with the same pay, terms and conditions of employment prior to the leave.

Employers also cannot require disclosure of confidential information relating to a physical or mental illness, injury or health condition, or confidential information relating to an absence due to domestic violence, sexual offence, stalking or human trafficking as a condition for providing sick leave.

Recordkeeping and Other Requirements

Employers can set a reasonable minimum increment for use of sick leave, including and up to four hours. Unused sick leave can be carried over to the following calendar year. Employers are not required, however, to pay employees for unused sick leave at the end of the calendar year or upon separation from employment.

Under the State Sick Leave Law, employers are required to maintain records of the amount of sick leave provided to employees. Upon an employee's oral or written request, employers must provide employees with a summary of the amount of their sick leave used and accrued in the current and/or preceding calendar year within three business days.

Interaction with Existing Leave Policies, Laws and Collective Bargaining Agreements

Employers with an existing sick leave or time off policy that provides employees with an amount of leave which meets or exceeds the requirements of the new state law, and satisfies its accrual, carryover and usage requirements, are not required to provide additional sick leave.

The State Sick Leave Law also does not preempt laws or ordinances enacted by cities with a population of 1 million or more that meet or exceed the requirements for minimum hours or use. Accordingly, New York City's Sick Leave Law still applies for employees in New York City. It is not clear, however, how the new state law interacts with the city's sick leave law. Based on New York City's Sick Leave Law's interaction with other leave laws, leave provided by the State Sick Leave Law may run concurrently. Furthermore, the new state law provides paid sick leave in excess of what is provided by the city's sick leave law for employers of at least 100 employees. In those instances, any sick leave provided for by the new state law in excess of the city's sick leave law would be, at a minimum, appended to the lower standards provided by the city law. Regulations to be issued by the New York State Department of Labor (NYSDOL) should provide additional guidance.

Different requirements apply to employers that enter into a collective bargaining agreement on or after September 30, 2020, the effective date of the new state law. These employers may, under a collective bargaining agreement, provide comparable benefits in the form of leave, compensation, or other employee benefits, or may provide sick leave that is different from what is required by the new state law as long as the collective bargaining agreement specifically acknowledges the provisions of the State Sick Leave Law.

Employer Takeaways

The NYSDOL will likely issue guidance in the coming months, but employers are well-advised to work with counsel now to review existing sick leave and PTO policies, and their implementation, in order to ensure compliance with the State Sick Leave Law. Managers and human resource personnel should be trained to handle requests for sick leave under the new state law. Payroll records should be updated to include the amount of sick leave provided to each employee. It is also advisable for employers to include sick leave tracking on employees' wage statements.

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