

NEW YORK DEPARTMENT OF LABOR CONFIRMS SICK LEAVE CAN BE USED FOR VACCINATION SIDE EFFECTS

Insights
Jun 1, 2021

Employees in New York must be permitted to use sick leave under the New York Paid Sick Leave Law (NYPSL) for recovery from any side effects of the COVID-19 vaccine. Citing studies that found workers were avoiding the COVID-19 vaccine due to fear of missing a day of work due to side effects, the New York Department of Labor issued guidance on May 27 confirming that employees can use sick leave for the recovery of any side effects of the COVID-19 vaccine.

What Do You Need to Know?

[The NYPSL that took effect on January 1, 2021 provides all New York employees with sick leave.](#) The level of obligation is keyed to the size, and in some cases, revenue of employers, as detailed [here](#). Employees can use sick leave for their “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,” among other reasons.

The NY DOL’s latest guidance confirms that employers are obligated to honor an employee’s desire to use their accrued sick leave to recover from any side effects of the COVID-19 vaccination. New York also [requires employers to provide up to four hours of paid time off](#), per shot, for employees to get vaccinated, which is in addition to sick leave under the NYPSL.

What Employers Must Do

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Given that COVID-19 vaccine side effects mimic an illness, you may have already been permitting employees use sick leave to recover from those side effects. If not, you must do so going forward. If you are aware of any instances where an employee was denied sick leave to recover from side effects, you will likely want to retroactively pay them for any unpaid time off and deduct that time from their sick leave bank.

Finally, in order to encourage your workers to get vaccinated, you may want to let them know that any time off needed to recover from side effects will be covered by sick leave. This will hopefully quell the fears of any employee hesitant to get vaccinated because of concerns of missing a day of work and the attendant wages.

We will continue to monitor developments impacting New York employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information and check out our [FP Vaccine Resource Center For Employers](#). If you have questions, please contact your Fisher Phillips attorney or any attorney in our [New York City](#) office.