



# New York Passes Statewide Safe And Sick Leave Law

Insights

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Amid the COVID-19 pandemic, New York State has passed legislation guaranteeing most workers in the state paid sick leave starting next year. This is in addition to the emergency COVID-19 related sick leave enacted by the legislature just weeks ago. Enacting a statewide sick leave law has long been on Governor Cuomo's agenda, predating the current pandemic. What do employers need to know about this new law?

## Overview Of The Sick Leave Law

The state sick leave law will require New York employers to provide sick leave to its employees effective January 1, 2021, with the level of obligation keyed to the size (and in some cases, revenue) of employers.

### *Amount And Accrual Of Leave*

The amount of leave is to be provided as follows:

- Four or fewer employees: 40 hours *unpaid* sick leave per calendar year.
- Four or fewer employees with a net income of greater than \$1 million in the previous tax year: 40 hours paid sick leave per calendar year.
- Between 5 and 99 employees: 40 hours paid sick leave per calendar year.
- 100 or more employees: 56 hours paid sick leave per calendar year.

Employees must accrue sick leave at a rate not less than one hour of sick leave for every 30 hours worked. Employees will begin accruing sick leave at the commencement of employment or within 180 days after the sick leave law is enacted, whichever is later.

Assuming Governor Cuomo signs the law in short order, as expected, this means sick leave accruals will begin late September or early October, depending on the date of enactment. Employers can front load the total amount of sick leave to avoid tracking accruals, but the employer cannot then reduce or revoke that sick leave based on the number of hours actually worked by the employee.

**[Ed. Note: Governor Cuomo signed the law on April 3, 2020, which means sick leave accruals must begin September 30, 2020.]**

### *Use Of Leave*

Use of sick leave begins January 1, 2021. Employees can use sick leave for the following reasons:

- Mental or physical illness, injury, or health condition of the employee or the employee's family member, regardless of whether the illness, injury or health condition has been diagnosed or requires medical care at the time the employee requests leave;
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or the need for medical diagnosis of, or preventive care for, the employee or the employee's family member;
- An absence from work when the employee or their family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking for any of the following reasons:
  - To obtain services from a domestic violence shelter, rape crisis center, or other services program;
  - To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or their family members;
  - 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;
  - To file a complaint or incident report with law enforcement;
  - To meet with a district attorney's office;
  - To enroll children in a new school; or
  - 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.

For purposes of this sick leave law, "family member" includes the employee's child, spouse, domestic partner, parent, sibling, grandchild, grandparent, and child or parent of the employee's spouse or domestic partner.

Employers can set a reasonable minimum increment for the use of sick leave, not to exceed four hours. Unused sick leave must carry over to the next calendar year. However, employers can limit use of sick leave to 40 hours, or 56 hours for employers with 100 or more employees.

### ***Interaction With Other Paid Time Off Policies***

Employers can meet their obligations under this law through an already existing sick leave or paid time off policy, so long as that policy meets or exceeds the requirements of this law, including amount of leave, accrual, carryover and usage.

The law also provides that any sick leave laws currently enacted by a municipality will not be limited or diminished by this state law. Accordingly, employers in New York City and Westchester – both

which have already existing sick leave laws – need to comply with both laws, depending on which provides greater benefits.

For example, employers with 100 or more employees will have to provide 56 hours of paid sick leave, and not the 40 hours provided under both the New York City and Westchester laws. New York City employers will still be subject to the broader definition of family member under the New York City sick leave law, which includes “any other individuals related by blood to an employee” or “any other individual whose close association with the employee is the equivalent of a family relationship.” The new sick leave law specifically states that it does not prevent a city with a population of one million or more from enacting a local law that meets or exceeds the minimum hours and usage provided in the state law.

### **What Employers Must Do Next**

All employers in New York must prepare to provide sick leave in accordance with the new law. Even employers with existing sick leave or paid time off policies need to review their policies to ensure compliance with the new law.

We expect the state to issue additional regulations and guidance in the coming months, so make sure you are subscribed to Fisher Phillips’ alert system to gather the most up-to-date information. For more information about compliance with the new law, contact any attorney in our New York City office at 212.899.9960 or your Fisher Phillips attorney.

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*This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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