

New York Mandates Statewide Sick Leave

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What You Need To Know:

- **New York State employers will soon be required to provide sick leave to employees in amounts potentially greater than what has been required under New York City law.**
- **The amount of sick leave, and whether it must be paid, depends on employer size and income.**

New York State is joining the ranks of a growing number of states that mandate employers to provide sick leave to their employees. At a minimum, New York employers will soon have to provide paid or unpaid sick leave as follows:

- Employers with 100 or more employees must provide up to 56 hours of **paid** sick leave a year.
- Employers with between five and 99 employees must provide up to 40 hours of **paid** sick leave a year.
- Employers with four or fewer employees and a net income of greater than \$1 million in the previous tax year must provide up to 40 hours of **paid** sick leave a year.
- Employers with four or fewer employees and a net income of \$1 million or less in the previous tax year must provide up to 40 hours of **unpaid** sick leave a year.

Employers will be required to provide at least one hour of sick leave for every 30 hours worked by the employee, up to a total of 56 hours of sick leave in a year for employers of 100 or more and 40 hours of sick leave in a year for other employers. The law addresses how to determine employer size for the purposes above.

An employee will begin to **accrue** sick leave at the commencement of employment or Sept. 30, 2020, whichever is later, and be permitted to begin **using** sick leave not sooner than Jan. 1, 2021. An employer may elect to “frontload” the

total amount of sick leave required to fulfill its obligations under the law at the beginning of the year.

Sick leave may be used for various reasons, including an employee's or the employee's family member's mental or physical illness, injury, or health condition; an employee's or the employee's family member's need for medical diagnosis or preventative care; and certain reasons related to domestic violence, a family offense, sexual offense, stalking, or human trafficking. An employee's unused sick leave must be carried over to the following year. However, employers may place a cap on the number of hours of sick leave an employee may use each year, so long as the cap is set at no less than 56 hours for employers of 100 or more and 40 hours for all others. The law does not require employees to be paid for any unused sick leave when employment ends. It does impose certain record-keeping obligations on employers.

Even those New York employers that already offer sick leave should take note of this state law and ensure compliance with it, including those employers in New York City and Westchester County, which will have to comply with both local and state requirements pertaining to sick leave. Notably, New York City employers with 100 or more employees will now be required to provide up to 56 hours of paid sick leave, rather than just the 40 hours required under New York

City's Earned Safe and Sick Time Act. This new sick-leave enactment also comes on the heels of New York State's enactment of a separate sick-leave entitlement for those under a mandatory or precautionary order of quarantine or isolation due to COVID-19.

Though an employer must offer an amount of sick leave that complies with the requirements of the new state law, an employer could potentially modify its vacation time allocation in light of the required sick-leave offering or may choose to implement a general paid time-off policy that complies with the new law's requirements.

We urge all New York employers to review their sick leave and other time-off policies to ensure compliance with the new statewide law and other applicable law. We at Lowenstein Sandler regularly review and draft employer policies, and are happy to assist as needed.

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