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New York employers: Get ready for the state's new paid sick leave law

On April 3, New York enacted a paid sick leave law separate from, and in addition to, its earlier law mandating COVID-19 leave benefits for employees under quarantine or isolation orders. The general leave mandate is slated to take effect on September 30 and will allow employees to begin using accrued time on January 1, 2021.

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Background

On March 18, New York enacted legislation requiring employers to provide job-protected sick leave to employees subject to mandatory or precautionary quarantine or isolation orders by the state or other authorized entity due to COVID-19. The employer's size and net income dictate the amount of leave required. The law, which took effect immediately, also expanded employee eligibility for paid family leave (PFL) or short-term disability benefits following the exhaustion of employer-provided paid sick leave. (See our [March 24, 2020 FYI](#) and [March 31, 2020 FYI Alert](#) for more information on quarantine leave.)

Shortly thereafter, New York enacted a statewide paid sick leave (PSL) law as part of its fiscal year 2021 [budget](#). The new leave mandate, which is separate and distinct from the state's quarantine leave law, is slated to take effect on September 30, 2020 and will allow employees to begin using accrued time on January 1, 2021.

New statewide mandate

While the new statewide mandate does not preempt existing local laws — including New York City's Earned Safe and Sick Time Act and Westchester County's Earned Sick Leave and Safe Time Leave Law — some of its provisions offer more generous PSL benefits and employee protections. In addition, the new sick leave law allows cities with a population of at least one million to enact a local sick leave ordinance that meets or exceeds statewide requirements for minimum hours and use.

Covered employers and employees

The new law covers nearly all private sector employers and employees. For these purposes, the term “employer” includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service. It does not, however, include government agencies. The term “employee” is defined as any person employed for hire by an employer in any employment.

Paid and unpaid leave

Under the new law, the amount of leave employers must provide — and whether it is paid or unpaid — depends on their size and net income. Both full-time and part-time employees must be counted in determining employer size, but the law does not indicate whether out-of-state employees are included in the count. In each calendar year, employers with:

- Four or fewer employees and a net income of \$1 million or less in the previous tax year must provide at least 40 hours of unpaid sick leave
- Four or fewer employees and a net income of more than \$1 million in the previous tax year must provide at least 40 hours of paid sick leave
- Between five and 99 employees must provide at least 40 hours of paid sick leave
- 100 or more employees must provide at least 56 hours of paid sick leave

Collective bargaining agreements entered into on or after the effective date of the sick leave law may provide a comparable benefit in the form of leave, compensation, other employee benefits (or some combination thereof), if the agreement specifically acknowledges the new law’s provisions.

Accrual, use, and carryover

Beginning on the later of September 30, 2020 or their first day of employment, employees will accrue one hour of sick leave for every 30 hours worked up to the following annual caps. Generally, employers with fewer than 100 employees can cap employees’ accrual at 40 hours of PSL per year, while the cap for larger employers is 56 hours per year. Alternatively, employers may choose to frontload the required sick leave at the beginning of the year.

PSL may be used for the following purposes:

- A mental or physical illness, injury, or health condition of the employee or their family member, regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care when leave is requested
- The diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventive care for, the employee or their family member
- Certain absences from work when the employee or their covered family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking

For these purposes, covered family members include an employee's child, spouse, domestic partner, parent, sibling, grandchild, grandparent, and child or parent of their spouse or domestic partner.

Employers can set minimum increments to use of up to four hours and may restrict the use of any accrued sick leave until January 1, 2021. Further, employers with 100 or more employees can limit PSL use to 56 hours per year while smaller employers can limit use to 40 hours. Employees are entitled to carry over earned but unused PSL from year to year up to a certain maximum based on employer size. However, it is unclear whether the carryover provision will apply to an employer that frontloads leave at the beginning of the year.

When used, PSL must be paid at the greater of the employee's regular rate of pay or the applicable minimum wage. Upon return to work following PSL, an employee must be restored to the position they held prior to leave with the same pay and other terms and conditions of employment.

Payout and rehire provisions

Employers are not required to pay out earned, unused PSL upon termination, resignation, or other separation from employment. The law does not address whether an employer has any obligation to reinstate previously earned but unused PSL for rehires.

Recordkeeping

The new law requires employers to establish and maintain accurate payroll records for at least six years showing the amount of sick leave provided to each employee, along with the other information required under Section 195 of the New York Labor Law.

Existing policies

Employers will not be required to provide any additional PSL if their existing PSL or paid time off policies are at least as generous as the new law with regard to amount of leave, accrual, carryover, and use requirements.

Buck comment. Employers that currently provide 40 hours of paid leave annually in compliance with New York City and/or Westchester County law should generally be able to have these benefits run concurrently with statewide PSL. However, they may need to modify their existing use policies and practices to satisfy more generous statewide conditions.

Notice and posting

Notably, the new law does not obligate employers to provide individual employee PSL rights notices or post such information. However, employers must provide an employee with a summary of PSL accrued and used in the current and/or any previous calendar year within three business days of an oral or written request.

In closing

Employers currently looking to update their policies to comply with the new statewide sick leave law should be aware that a number of its requirements still need clarification. Employers should monitor the New York Department of Labor's website for guidance and update existing leave policies and payroll practices as needed to ensure compliance.

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