

## **Alert** | Labor & Employment



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### **New York State and New York City Paid Safe and Sick Leave Laws**

New York state's new paid sick leave law will mandate the payment of sick leave to employees in New York state beginning Jan. 1, 2021. As discussed below, the [New York City Earned Safe and Sick Time law](#), which has already required sick time for New York City employees, was amended this week to enhance the terms of that law largely in accordance with the New York state law.

The new state law requires every employer in the state of New York to provide its employees with sick leave, though the amount depends on the size of the employer. Employers with four or fewer employees must provide each employee with up to 40 hours of unpaid sick leave in each calendar year. However, if an employer of this size has a net income of greater than one million dollars in the previous tax year, the employer must provide each employee with up to 40 hours of paid sick leave. For employers with between five and 99 employees, each employee must be provided with up to 40 hours of paid sick leave in a calendar year. Finally, for employers with 100 or more employees in any calendar year, each employee must be provided with up to 56 hours of paid sick leave in each calendar year.

The requirements under New York state's new sick leave law are a floor. Nothing in the new law prevents an employer from going above and beyond the minimum requirements. Therefore, if an employer already maintains, or hereafter adopts, a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements of the new sick leave law and satisfies the

accrual, carryover, and use requirements, the employer need not provide any additional sick leave pursuant to the new law.

Sick leave accrues at a rate of one hour for every 30 hours worked, unless an employer elects to frontload all sick time at the beginning of the year. Employees begin accruing sick leave at the commencement of their employment or the effective date of the law (Sept. 30, 2020), whichever is later. Employees cannot, however, begin to use sick leave time until Jan. 1, 2021.

Under the new sick leave law, employers must provide accrued sick leave for the following purposes:

1. For a mental or physical illness, or health condition of an employee or an 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 the leave;
2. For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventative care for, an employee or an employee's family member; or
3. For an absence from work due to any of the following reasons when the employee or employee's family member has been a victim of domestic violence pursuant to subdivision 34 of Section 292 of the Executive Law, a family offense, sexual offense, stalking, or human trafficking:
  - a. To obtain services from a domestic violence shelter, rape crisis center, or other services program;
  - b. To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or the employee's family members;
  - c. 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;
  - d. To file a complaint or domestic incident report with law enforcement;
  - e. To meet with a district attorney's office;
  - f. To enroll children in a new school; or
  - g. 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.

The reasons outlined in subsections (a) through (g) above must relate to domestic violence, family offense, sexual offense, stalking, or human trafficking, and it is noted that if the employee is the person who committed these acts, s/he is ineligible for leave.

The law defines "family member" as an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent; and the child or parent of an employee's spouse or domestic partner.

Employers cannot require employees to disclose any confidential information in verifying the need for sick leave, and employees have a right to be reinstated and protected against retaliation for exercising their rights under the new sick leave law. Further, if an employee requests verbally or in writing a

summary of the amounts of sick leave accrued and used in the current calendar year and/or any previous calendar year, an employer must provide the information requested within three business days.

An employee's unused sick leave must be carried over to the following year; however, employers may still limit the use of sick leave to 40 or 56 hours per calendar year based on the employer's size. Employers are not required to pay an employee for unused sick leave upon the employee's termination, resignation, retirement, or other separation from employment under the new law, though employers should review their company policies to ensure they are clear in this regard. Employers may set a reasonable minimum increment for the use of sick leave which must not exceed four hours.

The Commissioner of Labor has not yet issued guidance on the new leave law but has the authority to do so in the future. Although employees cannot use leave under the law until Jan. 1, 2021, the law goes into effect on Sept. 30, 2020; thus, employers should be selecting an accrual method and tracking accrued time, carrying over accrued time for the employee to start using in January 2021, and providing information to employees when requested as of the law's effective date.

On Sept. 28, 2020, Mayor DeBlasio signed legislation amending New York City's Paid Safe and Sick Time Act to align with the new state paid sick leave law. Specifically, Int. No. 2032-A amends the city's law to require the same sick leave usage and accrual requirements as the new state sick leave law. Previously exempt employers with four or fewer employees must now provide up to 40 hours of paid sick leave per calendar year if their net income was greater than \$1 million dollars in the previous tax year, and employers with 100 or more employees will now be required to provide up to 56 hours per calendar year of paid safe and sick time leave.

The bill also introduced a few new requirements for employers in New York City. First, employers must now provide employees with pay statements or a separate writing each pay period that includes the amount of sick and safe leave accrued and used by the employee during the pay period, and the employee's total balance of sick and safe leave. Second, employers that require documentation from their employees after using three or more consecutive days of safe and sick leave must now reimburse the employee for all fees charged by a health care provider or other provider for providing the documentation. Third, the city law now lists prohibited "adverse actions" that employers are prohibited from taking in response to employees' use or attempted use of safe and sick leave. On top of regularly recognized "adverse actions" covered by antidiscrimination laws, the amended law also recognizes that any disciplinary action taken against an employee for use or attempted use of protected leave, or actions that may deter an employee from taking leave, may be deemed "adverse actions." Finally, the bill removes the prior requirement that an employee work 80 hours within New York City to be eligible for safe and sick leave. The changes to New York City's Sick and Safe Leave Law go into effect on Sept. 30, 2020.

## Authors

This GT Alert was prepared by:

- [Jerrold F. Goldberg](#) | +1 212.801.9209 | [goldbergj@gtlaw.com](mailto:goldbergj@gtlaw.com)
- [Nicholas A. Corsano](#) | +1 212.801.6827 | [corsanon@gtlaw.com](mailto:corsanon@gtlaw.com)

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