

New York State Permanent Sick Leave Law Takes Effect on September 30, 2020

The Bottom Line

- *Before September 30, 2020, New York employers should review and revise their sick leave and paid time off policies to ensure compliance with the New York State Sick Leave law.*
- *Large employers with 100 or more employees will need to ensure that they provide at least 56 hours per year that can be taken by employees for reasons covered by the law.*
- *New York employers may also need to revise waiting periods for new hires and practices related to carryover of accrued time from year to year.*

Earlier this year, New York State enacted a statewide sick leave law that requires employers to provide paid sick/safe leave (NYPSL) to all employees. This legislation takes effect on September 30, 2020, which is when New York State employees will begin accruing NYPSL, although employees may only use accrued leave beginning January 1, 2021.

While most employers in New York City and Westchester County are already required to provide sick and safe time under local laws, all New York State employers will now have to provide NYPSL to their employees. In addition, large employers in New York City and Westchester County may have to increase the amount of sick/safe time that they provide. Unlike New York State's paid sick/quarantine leave legislation, which was passed in response to the COVID-19 pandemic and is addressed in our prior [alert](#), the NYPSL requirement addresses a different and broader range of covered reasons for taking sick leave and has permanent effect.

Sick Leave Amount, Accrual and Carryover

The amount of NYPSL employers will be required to provide depends on their company size.

- Employers with 4 or fewer employees with a net income of less than \$1 million in the previous tax year must provide up to 40 hours of unpaid sick leave per calendar year.
- Employers with between 5 and 99 employees, and employers with 4 or fewer employees and a net income of more than \$1 million in the previous tax year, must provide up to 40 hours of paid sick leave per calendar year.
- Employers with 100 or more employees must provide up to 56 hours of paid sick leave per calendar year.

Employees accrue NYPSL immediately upon hire at a rate of 1 hour for every 30 hours worked up to the above maximum annual amounts. While unused NYPSL carries over into the following year, employers with 99 or fewer employees can limit the use of NYPSL to 40 hours per year and employers with 100 or more employees can limit the use of NYPSL to 56 hours per calendar year.

Instead of using the accrual method, employers can frontload the annual NYPSL allotment at the beginning of the calendar year. Notably, the law does not address whether such frontloading exempts employers from carryover requirements, in contrast to the New York City Earned Safe and Sick Time Act (ESSTA), which explicitly provides that employers that frontload sick/safe time are not required to carry over unused time from year to year.

Employers with existing paid time off policies are not required to provide any additional sick leave as long as the paid time off policy provides employees with at least the amount of leave that is required by the law, and also satisfies the law's accrual, carryover and use requirements.

Covered Reasons and Use of Sick Leave

Starting on January 1, 2021, New York employees may use NYPSL for the following covered reasons:

1. The employee's or the employee's family member's mental or physical illness, injury or health condition, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;
2. For diagnosis, care, treatment or preventative care of the employee or employee's family member's mental or physical illness, injury or health condition; and/or
3. Certain safe-time related absences due to the employee or employee's family member being a victim of domestic violence, a family offense, sexual offense, stalking or human trafficking.

While ESSTA and Westchester County's sick leave ordinances permit employers to impose a waiting period before a new hire's use of sick time, the state sick leave law is silent as to whether employers may impose such a waiting period.

Employers may set a reasonable minimum increment for the use of NYPSL of no more than 4 hours and are not required to pay out any unused sick time upon termination of employment.

Recordkeeping and Notice Requirements

Employers must retain payroll records for 6 years showing the amount of sick leave provided to each employee. In addition, within 3 business days of an employee's verbal or written request, employers are required to provide a summary of the amounts of NYPSL accrued and used by such employee in the current calendar year and/or any previous calendar year.

While the law does not have any requirement that employers provide a notice to employees who are hired advising them of their right to NYPSL, New York City employers are still obligated to provide the [Notice of Employee Rights](#) under ESSTA that is published by the New York City Department of Consumer Affairs (DCA). The DCA may ultimately update its form notice to reflect that large employers with 100 or more employees now have to provide at least 56 hours of paid sick time per year.

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