

New York State Enacts Sick Leave Law

April 8, 2020

By [Susan Gross Sholinsky](#), [Nancy Gunzenhauser Popper](#), and [Corben J. Green](#)

On March 17, 2020, Governor Andrew Cuomo announced a [three-way agreement](#) with the New York State Legislature that includes, in addition to mandatory [COVID-19 paid sick leave](#), a [Paid Sick Leave Law](#) (“Law” or “PSLL”). The Law, which was included within New York State’s fiscal year 2021 budget bill ([S7506B](#)), was signed by Governor Cuomo on April 3, 2020. The PSLL will add a new Section 196-b to the State Labor Law and will allow employees to begin accruing sick leave 180 days after enactment (September 30, 2020) and to start taking sick leave as of January 1, 2021.

The PSLL applies to all private employers (and all employees) in New York State, but the level of required leave depends on an employer’s size and net income. Certain very small employers will only have to provide *unpaid* sick time. If an employer’s existing sick leave or time-off policies meet the minimum requirements (including accrual, carryover, and use) of the Law, no additional sick leave needs to be provided.

Accrual of Sick Leave

The Law requires employees to accrue sick leave at a rate of at least one hour for every 30 hours worked, beginning on the later of (i) the commencement of employment, or (ii) the effective date of the Law. The amount of sick leave accrued each year depends on the employer’s size and net income:

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

Employers must calculate the size of the workforce using a calendar year—from January 1 to December 31—to determine leave accrual eligibility. It is unclear at this time if employers should calculate their total number of employees during this period, or take an average. For all other purposes, including determination of when employees may use their leave, a “calendar year” may also mean any consecutive 12-month period set by the employer.

Alternatively, employers may frontload sick leave by providing employees with 40 (or 56) hours of sick leave at the beginning of the calendar year (or any other 12-month period). An employer that chooses to frontload the benefit, however, may not later reduce it if it turns out that an employee did not work enough hours to accrue the full amount frontloaded.

Carryover of Earned Sick Time

Sick leave must be carried over from one year to the next, but an employer may limit sick leave use in a given year. Employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year, and employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year. The Law does not state whether there is a cap on the amount of sick time that may be carried over. The PSL, however, does not require employers to pay an employee for unused sick time, either at the end of the calendar year or upon the employee’s voluntary or involuntary separation from employment.

Use of Sick Leave

An employee may use accrued sick leave for:

- the employee’s, or a family member’s, mental or physical illness, injury or health condition, *regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time of the leave request;*
- the diagnosis, care, or treatment of an employee’s, or a family member’s, mental or physical illness, injury or health condition; and
- an absence from work when an employee, or an employee’s family member, who has experienced domestic violence, a sexual offense, stalking, or human trafficking receives assistance or attends to related matters after such an event, such as counseling, legal proceedings, or relocation, or “take[s] 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.”

“Family member” is defined 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. A “parent” includes a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood *in loco parentis* when the employee was a minor child. A “child” means a biological, adopted or foster child, a legal ward, or a child of an employee standing *in loco parentis*.

Employers may set a reasonable minimum increment for the use of sick leave, but the increment cannot be greater than four hours.

There is no waiting period for new employees to use sick leave.

Rate of Pay for Sick Leave

The PSSL requires employers to compensate employees entitled to paid sick leave at the greater of (i) their regular rate of pay, or (ii) the applicable minimum wage established by [Labor Law Section 652](#).

Employee/Employer Notice and Recordkeeping

An employee may request sick leave either orally or in writing. Unlike other leave laws, the PSSL does not expressly require that an employee provide “reasonable” notice for the need for leave or that notice be provided “as soon as practicable.”

The Law also does not contain a specific notice requirement for employers, but it does mandate that, upon an employee’s oral or written request, the employer provide the employee with a “summary” of sick leave accrued and used by the employee for the current and/or prior calendar year. Employers must respond to such a request within three business days of the date of the request.

Records showing the amount of sick leave provided to each employee for each week worked must be maintained for six years.

Confidentiality, Non-Retaliation, and Job Protection

The Law prohibits employers from requiring an employee to disclose the nature of any medical condition (either the employee’s or that of a family member) or of any domestic violence/sexual offense matter necessitating the need for leave. The Law is silent as to whether employers may ask employees for a doctor’s note to confirm the need for leave.

Employers may not retaliate against an employee for asserting any right granted under the PSSL, including taking or requesting leave. Upon their return from paid sick leave, employees must be restored to their former position with the same pay and other terms and conditions of employment.

Interaction with Employer Paid-Time-Off Policies, Local Laws, and Collective Bargaining Agreements

The Law does not require an employer to provide additional sick leave if the employer’s existing sick leave or time-off policy provides employees with an amount of leave and compensation that meets or exceeds the statutory minimums, and satisfies the statutory requirements with respect to accrual, carryover, and uses. The Law also does not prevent localities with a population of at least one million people from enacting or enforcing local laws that meet or exceed the PSSL’s minimum requirements.

Notably, [New York City's Earned Safe and Sick Time Act](#) ("ESSTA") requires employers to provide up to 40 hours of paid sick and safe time to employers with five or more employees and up to 40 hours of unpaid safe and sick time to employers with fewer than five employees. [Westchester County's Earn Sick Leave Law](#) ("ESLL") requires employers to provide up to 40 hours of paid sick time for employers with five or more employees and up to 40 hours of unpaid sick time to employers with fewer than five employees, while the County's Safe Time Law requires up to 40 additional hours for safe leave. Both ESSTA and ESLL apply only if the employee has worked for 80 hours, have different limitations on when new employees may begin to use sick leave (120 and 90 days, respectively), and offer expanded reasons for use (including to care for a child when a school is closed due to a public health emergency). It is not yet clear how the PSLL will interact with these two laws.

Collective bargaining agreements ("CBAs") entered into on or after the effective date of the PSLL must provide paid sick leave benefits that are at least "comparable" to those provided for under the Law. Such benefits may be in the form of paid time off, or other leave, compensation, or benefits. Further, the CBA must "specifically acknowledge" the provisions of the Law.

The PSLL directs the New York Department of Labor to provide guidance regarding the Law.

What New York Employers Should Do Now

- Employers that already provide employees with paid sick leave benefits that meet or exceed the Law's requirements need not change their current policy, as long as the policy meets all of the PSLL's mandates on uses, accrual, and carryover.
- Employers that do not currently have a paid sick leave policy or have one that falls short of the Law's statutory requirements should begin to develop a compliant policy that will be ready to implement by September 30, 2020, which is the date that employees begin to accrue sick leave benefits.
- Employers that have a unionized workforce should keep in mind the Law's mandates when negotiating a CBA that will go into effect on or after September 30, 2020.

For more information about this Advisory, please contact:

Susan Gross Sholinsky

New York
212-351-4789

sgross@ebglaw.com

Nancy Gunzenhauser Popper

New York
212-351-3758

npopper@ebglaw.com

Corben J. Green

New York
212-351-4583

cgreen@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.

© 2020 Epstein Becker & Green, P.C.

Attorney Advertising