

# NEW YORK STATE PAID SICK LEAVE FOR EMPLOYERS

All private sector workers in New York State are now covered under the state's new sick and safe leave law, regardless of industry, occupation, part-time status, overtime exempt status, and seasonal status. Federal, state, and local government employees are **NOT** covered, but employees of charter schools, private schools, and not-for-profit corporations are covered.

The law requires employers with five or more employees to provide their employees with paid sick and safe leave. Businesses with fewer than five employees and a net income of \$1 million or less must provide unpaid sick and safe leave to employees.

## KEY DATES

- **September 30, 2020:** Covered employees in New York State will start to accrue leave at a rate of not less than one hour for every 30 hours worked.
- **January 1, 2021:** Employees may start using accrued leave following a verbal or written request to the employer for sick leave or safe leave reasons impacting the employee or their family for whom they are providing care or assistance with care.

## AMOUNT OF LEAVE

Employees will receive an amount of sick leave depending on the size of their employer:

Number of Employees	Employer Sick Leave Requirements
0 - 4	If net income is <b>\$1 million or less</b> in the previous tax year, the employer is required to provide up to 40 hours of <b>unpaid</b> sick leave per calendar year.
0 - 4	If net income is <b>greater than \$1 million</b> in the previous tax year, the employer is required to provide up to 40 hours of <b>paid</b> sick leave per calendar year.
5 - 99	Up to <b>40</b> hours of <b>paid</b> sick leave per calendar year.
100+	Up to <b>56</b> hours of <b>paid</b> sick leave per calendar year.

*A January 1 – December 31 calendar year must be used for purposes of counting employees. Small employers who reported net income of less than \$1 million do not need to pay their employees sick leave, but must provide the additional allotted leave time. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.*

## ALTERNATIVE ACCRUAL SYSTEM

As an alternative to employees accruing one hour for every 30 hours worked, employers may choose to provide the full amount of sick leave required by this law at the beginning of each calendar year (e.g., a business with over a 100 employees could provide 56 hours of sick leave to each employee starting January 1 of each year or at the beginning of a twelve month period as determined by the employee. Such up-front sick leave is not subject to later revocation or reduction if, for instance, the employee works fewer hours than anticipated by the employer).

## EXISTING POLICIES

If an employer, including those covered by a collective bargaining agreement, has an existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carryover, and use requirements, this law does not present any further obligations on that employer.

## **RETALIATION**

An employer cannot retaliate against an employee in any way for exercising their rights to use sick leave. Furthermore, employees must be restored to their position of employment as it had been prior to any sick leave taken. Employees who believe that they have been retaliated against for exercising their sick leave rights should contact the Department of Labor's Anti-Retaliation Unit.

## **RECORDKEEPING**

Employers must keep payroll records for six years which must include the amount of sick leave accrued and used by each employee on a weekly basis. Upon the request of an employee, employers are required provide, within three business days, a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

## **IS THERE A MINIMUM PERIOD OF EMPLOYMENT BEFORE AN EMPLOYEE CAN USE THEIR ACCRUED SICK LEAVE?**

No. Employees are immediately eligible to accrue leave under the law.

## **IS THERE A MINIMUM PERIOD OF EMPLOYMENT BEFORE AN EMPLOYER IS RESPONSIBLE FOR PROVIDING SICK LEAVE?**

No. For purposes of determining the number of employees under the law, it is the number of employees in any calendar year, regardless of the number of hours or days worked. For example, if an employer had three full-time employees work from January 1 to December 31, and two part-time employees who only worked part time for two weeks in December of the same year, that employer has five employees within the calendar year and would be required to provide up to 40 hours of paid sick leave to employees. Note that the employees in the above scenario would only accrue paid sick leave commensurate with the number of hours worked (e.g. if an employee worked 30 total hours during the calendar year, they would accrue 1 hour of paid sick leave).

## **ARE NONPROFIT EMPLOYERS EXEMPT?**

No. Nonprofit employers must comply with the law.

## **HOW DO EMPLOYEES WHO ARE PAID ON A COMMISSION, FLAT RATE BASIS, OR OTHER NON-HOURLY BASIS ACCRUE SICK LEAVE?**

When employees are paid on a non-hourly basis, accrual of sick leave is measured by the actual length of time spent performing work.

## **HOW MUCH NOTICE DOES AN EMPLOYEE HAVE TO GIVE TO THE EMPLOYER PRIOR TO USING THEIR ACCRUED SICK LEAVE?**

There is no specified notice or time period requirement under the law, provided, however, that there is an oral or written request to the employer prior to using the accrued sick leave, unless otherwise permitted by the employer.

## **WHAT IF AN EMPLOYEE IS PAID AT DIFFERENT RATES FOR DIFFERENT TASKS?**

Employees who are paid at more than one rate of pay must be paid for leave under the law at the weighted average of those rates. The weighted average is the total regular pay divided by the total hours worked in the week. Overtime exempt employees who are paid on an hourly basis are assumed to work 40 hours per workweek, when deriving their regular rate unless the terms and conditions of the employment specify or require otherwise. However, as noted above, employers are prohibited from reducing an employee's rate of pay for leave time hours only.

## **DOES AN EMPLOYER HAVE TO PROVIDE SICK LEAVE TO EMPLOYEES WHO TELECOMMUTE?**

Employees who telecommute are covered by the law for the hours when they are physically working in New York State, even if the employer is physically located outside New York State.

## **DOES PAID SICK LEAVE TRANSFER IF AN EMPLOYEE IS PROMOTED, DEMOTED, OR TAKES A DIFFERENT POSITION WITHIN A COMPANY?**

Yes. Leave accruals may not be reduced or otherwise restricted if an employee changes positions, roles, or locations with the same employer. Paid sick leave under this law must be paid out at the employee's rate of pay at the time the leave is taken.

## **DOES LEAVE REQUIRED UNDER NEW YORK LABOR LAW SECTION 196-B EXPIRE AT THE END OF A CALENDAR YEAR?**

Sick leave that is unused by an employee over the course of the year must be carried over to the next calendar year. However, employers may limit employee use to the number of hours that the employee is entitled to use within any calendar year (i.e., 56 hours for employers with 100 or more employees and 40 hours for employers with 99 or fewer employees). This may result in an employee maintaining a leave balance in excess of the amount they are permitted to use in any calendar year.

## **CAN AN EMPLOYER FRONT-LOAD ACCRUAL FOR PART-TIME EMPLOYEES?**

Yes. At the beginning of each calendar year, an employer can provide part-time employees with the hours of sick leave they would accrue based on the hours they are anticipated to work at the accrual rate of one hour of sick leave for every 30 hours the employee is anticipated to work. However, if the employer frontloads fewer than 40 hours, the employer must still track the employee's hours worked and accrual of sick leave because a part-time worker may work more hours than anticipated. If the employee works more hours than anticipated, the employer must allow the employee to accrue leave at the rate of one hour for every 30 hours worked until the total amount of front-loaded plus accrued sick leave in a calendar year equals 40 hours. Employees who are front-loaded less than 40 hours in a calendar year must be allowed to use up to 40 hours of sick leave in a calendar year if they have accrued it. An employer who front-loads fewer than 40 hours must allow employees to carry over up to 40 hours of unused sick leave into the new calendar year, in addition to front-loading the amount of time the employer expects the employee to earn in the new calendar year. Reminder: If the employer has not calculated employees' use and accruals, the employer cannot change the policy in the new calendar year since employees are entitled to carry over unused sick leave and use those hours at the beginning of the new calendar year.

For more information about New York State's Paid Sick Leave, including additional FAQs, regulations, and more, please visit [ny.gov/paidsickleave](https://ny.gov/paidsickleave).