

NEW YORK STATE PAID SICK LEAVE FAQ

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.

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.

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 \$1 million or less in the previous tax year, the employer is required to provide up to 40 hours of unpaid sick leave per calendar year. |
| 0 - 4 | If net income is greater than \$1 million in the previous tax year, the employer is required to provide up to 40 hours of paid sick leave per calendar year. |
| 5 - 99 | Up to 40 hours of paid sick leave per calendar year. |
| 100+ | Up to 56 hours of paid sick leave per calendar year. |

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

DEFINITIONS

WHO QUALIFIES AS A "FAMILY MEMBER" FOR THE PURPOSES OF THIS LAW?

"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. "Parent" is defined as 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. "Child" is defined as a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

WHAT IS A CALENDAR YEAR?

To determine the total number of employees, "calendar year" means the 12-month period from January 1 to December 31. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO TELECOMMUTE OR WORK FROM HOME INSTEAD OF TAKING SICK LEAVE?

No. An employer cannot require an employee to work from home or telecommute instead of taking sick leave. But an employer can offer the employee the options of working from home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees will retain the paid or unpaid sick leave that they have accrued.

ACCRUALS

DO EMPLOYEES CONTINUE TO EARN SICK LEAVE WHILE USING PAID SICK LEAVE UNDER THIS LAW?

No. Employees are only required to be credited with leave time for hours worked and not for hours spent using sick leave time under this law.

DO EMPLOYEES ACCRUE LEAVE FOR PAY RECEIVED FOR NON-WORKING TIME?

No. Employees do not accrue leave for payments that are not for hours worked, such as bonuses or subject-to-call time. However, time that is considered “hours worked,” including on-call time, training time, and travel time, must be counted for the purposes of accruing leave.

THE LAW PROVIDES THAT EMPLOYEES ACCRUE SICK LEAVE AT A RATE OF NOT LESS THAN ONE HOUR PER EVERY THIRTY HOURS WORKED. IF AN EMPLOYEE FOR A MEDIUM-SIZE BUSINESS WITH 50 EMPLOYEES WORKS IN EXCESS OF 1,200 HOURS DURING A CALENDAR YEAR, IS THE EMPLOYER REQUIRED TO PROVIDE OVER 40 HOURS OF PAID SICK LEAVE?

No. For employers with between 5 and 99 employees in any calendar year, this law requires that each employee be provided with up to 40 hours of paid sick leave in each calendar year. While an employer may provide additional paid sick leave hours for their employees, they are not required to do so.

PERMITTED USES

CAN AN EMPLOYEE USE SAFE LEAVE IF THE POLICE HAVE NOT BEEN CONTACTED OR THE PERPETRATOR HAS NOT BEEN CONVICTED?

Yes. An employee’s eligibility for safe leave is not dependent on reporting to law enforcement or a criminal conviction.

IF AN EMPLOYER HAS BEEN ORDERED TO CLOSE TEMPORARILY DUE TO A PUBLIC HEALTH EMERGENCY, MAY EMPLOYEES USE ACCRUED SICK LEAVE DURING THE PERIOD OF CLOSURE?

Whether or not the usage of sick leave in this scenario would be fact specific depending on the type of health emergency, including the risk of contagion, and other health considerations. Accrued sick leave may be used by an employee for preventive care of a mental or physical illness, injury or health condition.

Sick leave under this law is separate and additional to the quarantine leave for employees subject to a precautionary or mandatory order of quarantine or isolation related to COVID-19 (Ch. 25 of the laws of 2020), and use of COVID-19 leave does not impact or otherwise utilize an employee’s paid sick leave accruals or usage. More information on COVID-19 Leave is available at paidfamilyleave.ny.gov/covid19.

CAN AN EMPLOYEE USE SICK LEAVE FOR DOCTOR, DENTIST, EYE DOCTOR, OR OTHER ROUTINE APPOINTMENTS?

Yes. Employees may use sick leave for appointments when they require treatment for a condition or for preventive medical care.

DOES SICK LEAVE INCLUDE BEREAVEMENT LEAVE? CAN AN EMPLOYEE USE ACCRUED SICK LEAVE WHEN THERE IS DEATH IN THEIR FAMILY?

Permissible reasons to use accrued sick leave does not include a period of bereavement. However, employers must provide sick leave for a mental or physical illness, injury, or health condition, regardless of whether they have been diagnosed or require medical care, as well as for the preventative care for such illnesses, injuries, or conditions.

WHO IS ELIGIBLE

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

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

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

There is no minimum period of employment before an employee can use sick leave. However, unless an employer provides the required amount of sick leave up-front at the beginning of a calendar year or otherwise has a sick leave policy that exceeds the requirements of the law, an employee would have to work at least 30 hours before accruing any sick leave.

IF A BUSINESS IS JOINTLY OWNED BY TWO INDIVIDUALS AND THE BUSINESS FAILS TO PROVIDE SICK LEAVE AS REQUIRED UNDER THE LAW, WHICH OWNER IS RESPONSIBLE?

Both owners would be jointly and severally responsible for the failure to comply with the law. The term “employer” includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service.

IF A BUSINESS WITH 15 FULL-TIME, YEAR-ROUND EMPLOYEES ALSO HIRES SEASONAL PART-TIME WORKERS, MUST THE EMPLOYER PROVIDE SICK LEAVE TO THESE PART-TIME SEASONAL WORKERS AS WELL?

Yes. For the purposes of this law, an employee is defined as “any person employed for hire by an employer in any employment.” If an employer has five or more employees but fewer than 100, all employees, including part-time seasonal workers, are entitled to accrue one paid sick hour for every 30 hours they work.

DOES A SMALL BUSINESS WITH ONLY THREE EMPLOYEES BUT WITH JUST OVER ONE MILLION DOLLARS EARNINGS HAVE TO PROVIDE PAID LEAVE TO EMPLOYEES?

A business employing four or fewer people is obligated to provide paid sick leave if it has over one million dollars in net income.

DOES AN EMPLOYER HAVE TO PROVIDE SICK LEAVE TO EMPLOYEES WHO TELECOMMUTE OUTSIDE OF NEW YORK STATE?

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

IF AN EMPLOYER HAS MULTIPLE BUSINESS LOCATIONS WITHIN NEW YORK STATE, WITH FOUR OR FEWER EMPLOYEES AT EACH LOCATION, DOES THE EMPLOYER HAVE TO PROVIDE PAID SICK LEAVE UNDER THE LAW?

To determine the number of employees in this scenario, the employer would count the total number of employees across all locations. For example, if there were 3 employees who worked at one location, and 4 employees who worked at another location, the employer would have 7 total employees, and would be required to provide up to 40 hours of paid sick time in each calendar year, for each employee.

DOES AN EMPLOYEE’S IMMIGRATION STATUS AFFECT WHETHER THEY ARE ENTITLED TO SICK LEAVE UNDER THE LAW?

No. An employee’s immigration status has no effect on their eligibility for sick leave benefits under this law.

ARE DOMESTIC WORKERS COVERED BY THE LAW?

Domestic workers are eligible for leave protections under the law depending on the size of their employer, in addition to leave under the State Domestic Worker Bill of Rights, which is available at labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm

ARE NONPROFIT EMPLOYERS EXEMPT?

No. Nonprofit employers must comply with the law.

LEAVE INCREMENTS

CAN AN EMPLOYEE USE SICK LEAVE FOR ONLY HALF OF A WORKDAY?

The maximum increment an employer may set for the use of sick leave under this law is four hours. An employee may use four hours of accrued sick leave as needed (or less, if an employer allows for smaller increments of sick leave usage, such as one or two hours).

RATE OF PAY

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.

IF AN EMPLOYEE USES LEAVE DURING HOURS THAT WOULD HAVE BEEN OVERTIME IF WORKED, DOES THE EMPLOYER HAVE TO PAY THE OVERTIME RATE OF PAY?

No. Employees are required to be paid their normal pay for leave time under the law.

ARE EMPLOYERS REQUIRED TO PAY EMPLOYEES FOR LOST TIPS AND GRATUITIES DURING LEAVE TIME?

No. Employers are not required to pay employees for lost tips or gratuities, but employers may not take a tip credit for leave time and must pay the employee their normal rate of pay or the applicable minimum wage, whichever is greater.

CAN A BUSINESS IN THE HOSPITALITY INDUSTRY THAT NORMALLY PAYS EMPLOYEES A TIPPED WAGE (ALLOWING FOR A TIP CREDIT/ALLOWANCE) PAY THAT SAME RATE WHEN EMPLOYEES USE SICK LEAVE?

No. Any employer who normally utilizes a tip allowance as a credit against the minimum wage requirements of their industry (e.g., in accordance with the Hospitality Industries Wage Order) cannot do so for employees' accrued sick leave. The rate of pay must be consistent with the applicable statutory minimum wage applicable to the employee.

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.

DO EMPLOYERS NEED TO PAY EMPLOYEES FOR UNUSED LEAVE AT THE END OF THE EMPLOYMENT RELATIONSHIP?

Unless required by another agreement or policy, including the employer's own written leave policy, employers are not required under this law to pay employees for unused sick leave at the end of an employment relationship. Seasonal employees who maintain an ongoing employment relationship with their employer maintain their leave accruals through such breaks in employment.

ALTERNATIVE ACCRUAL SYSTEM

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.

COLLECTIVE BARGAINING AGREEMENTS

WHAT IS REQUIRED FOR COLLECTIVE BARGAINING AGREEMENTS THAT ARE ENTERED INTO ON OR AFTER SEPTEMBER 30, 2020?

The law further provides that collective bargaining agreements entered into on or after September 30, 2020 may provide for different leave benefits, so long as such benefits are "comparable benefits for the employees" to those required by the law, and the agreement specifically acknowledges the provisions of Section 196-b of the Labor Law. Such acknowledgement should also specifically identify any benefits deemed comparable to the leave in the law.

DOES A COLLECTIVE BARGAINING AGREEMENT NEED TO ACKNOWLEDGE THE STATE SICK LEAVE REQUIREMENTS, OR IS A GENERAL REFERENCE SUFFICIENT?

To satisfy the requirements of this law, any agreement entered into after September 30, 2020 must specifically reference Labor Law Section 196-b. DOL recommends that the "comparable benefits for the employees" be explicitly identified and labeled as such in the agreement to avoid confusion or misunderstanding.

WILL THE DEPARTMENT OF LABOR TAKE COMPLAINTS FROM EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT?

Yes. All employees, regardless of union status, may file a complaint under the State Paid Sick Leave law with the Department of Labor. For the purposes of enforcement, DOL looks first to the existence of language in a Collective Bargaining Agreement that specifically acknowledges the provisions of Section 196-b of the Labor Law before looking to the specific practices complained of. If no such language exists in the agreement or the agreement predates Section 196-b, the Department will generally then proceed with its investigation to determine if the employer complied with the requirements of Section 196-b.

OTHER LEAVE LAWS

I LIVE IN WESTCHESTER COUNTY, WHICH PROVIDES DOMESTIC WORKERS UP TO 40 HOURS OF LEAVE PER YEAR REGARDLESS OF EMPLOYER SIZE. IS THAT STILL THE LAW?

Westchester County law currently provides that domestic workers accrue sick leave at the rate of one hour for every 7 days worked and earn and can use up to 40 hours of paid sick leave per year, regardless of the size of the employer. These benefits will continue to be available to domestic workers in Westchester County.

I LIVE IN NEW YORK CITY AND AM COVERED BY THE NEW YORK CITY PAID SAFE AND SICK LEAVE LAW. CAN I FILE A COMPLAINT WITH THE CITY FOR THIS LAW?

New York City may continue to enforce the provisions of the New York City Paid Safe and Sick Leave Law to the extent that such provisions meet or exceed the end standard or requirements for minimum hour and use set forth in the New York State Paid Sick Leave Law, as determined by the Commissioner of Labor.

MAY PAID FAMILY LEAVE BE USED CONSECUTIVELY WITH PAID SICK LEAVE (E.G. THREE DAYS OF PAID SICK LEAVE, TWO DAYS OF PAID FAMILY LEAVE)?

An employee can only choose to use sick leave during Paid Family Leave (PFL) if the employer allows it. Taking sick leave at the same time as PFL may allow the employee to receive their full salary for all or part of the leave. However, an employee cannot receive more than their full wages while receiving PFL benefits.

WHAT ABOUT OVERLAPPING STATE AND FEDERAL REQUIREMENTS?

The New York State Paid Sick law operates independently from other State and Federal leave requirements and must therefore be paid in addition to any other State or Federal leave entitlements.

EMPLOYEE RIGHTS & PROTECTIONS

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.

WHAT IS THE BENEFIT OF CARRYING OVER SICK LEAVE WHEN USAGE IS STILL LIMITED?

When sick leave is carried over into a new calendar year, an employee is able to use it right away instead of waiting to accrue leave.

CAN AN EMPLOYER REQUIRE THAT AN EMPLOYEE LOCATE A REPLACEMENT WORKER TO COVER A SHIFT/ JOB IF THE EMPLOYEE ELECTS TO USE THEIR SICK LEAVE?

No. So long as an employee is using the sick leave for one of the reasons prescribed under the law, an employer may not require any additional preconditions.

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.

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.

IF A COMPANY CHANGES OWNERSHIP OR MERGES WITH ANOTHER ENTITY, WILL EMPLOYEE SICK LEAVE ACCRUALS BE AFFECTED?

It depends. The obligation to provide sick leave under the law derives from an individual or entity's status as an employee's employer and is not limited to a single employer as the Labor Law imposes such obligations on "joint" employers (those who employ an individual with one or more others).

When investigating a claim for unpaid leave, DOL will evaluate the continuing obligations of employers on a case-by-case basis to determine if the circumstances are such that the employee, in fact, changed employers and no longer works for their former employer. As stated above, employees may file a complaint with the Department of Labor by calling **888-469-7365**.

WHAT ARE THE PENALTIES IF AN EMPLOYER DOES NOT PROVIDE THE REQUIRED SICK LEAVE TO ITS EMPLOYEES?

Under New York State Labor Law, failure to provide employee benefits such as sick leave, is equivalent to a failure to pay employee wages. Should an employer fail to provide their employees with sick leave as required under the law, they may be subject to civil/administrative actions and/or criminal penalties, including but not limited to, an order assessing the full amount of the wage underpayment, 100% liquidated damages, and civil penalties in an amount up to double the total amount to be due.

WHAT DO I DO IF MY EMPLOYER ISN'T PROVIDING ME WITH SICK LEAVE AS REQUIRED BY THE LAW?

Employees may file a complaint with the Department of Labor by calling **888-469-7365**.

MISCELLANEOUS

CAN AN EMPLOYER HAVE A POLICY THAT PERMITS EMPLOYEES TO DONATE UNUSED LEAVE TO OTHER EMPLOYEES?

Yes. An employer can have a policy that allows employees to donate unused leave to other employees, as long as the policy is entirely voluntary.

CAN AN EMPLOYER DISCIPLINE AN EMPLOYEE WHO MISUSES SICK LEAVE?

Yes. An employer may take disciplinary action, up to and including termination, against an employee who uses leave for purposes other than those provided for under the law, or who lies to their employer in connection with taking such leave.

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