

NEW YORK STATE PAID SICK LEAVE FOR SEASONAL WORKERS

All private sector seasonal 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, and overtime exempt 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.

KEY DATES

- **September 30, 2020:** Covered employees in New York State will start to accrue leave at a rate of one hour for every 30 hours worked.
- **January 1, 2021:** Employees may start using accrued leave.

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.

A January 1 – December 31 calendar year must be used for purposes of counting employees. Small employers who reported net income of less than \$1million 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.

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.

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).

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.

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.

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.

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.

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.

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**.

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