
All Employers Must Comply With New York Sick Leave Law

New York state enacted a law that requires **all employers** to offer sick leave. Employees can start accruing leave **Sept. 30, 2020** and must be allowed to start using provided leave by **Jan. 1, 2021**.

Employer Coverage and Required Sick Leave Amounts

The amount of required leave that an employer must provide is determined by the **number of employees** and **net income of the business**.

- Employers with **four or fewer employees** in any calendar year and a **net income of \$1 million or less** are required to provide employees with **up to 40 hours of unpaid sick leave** each calendar year.
- Employers with **four or fewer employees** in any calendar year and that have a **net income of greater than \$1 million dollars** in the previous tax year are required to provide employees with **up to 40 hours of paid sick leave** each calendar year.
- Employers with **between five and 99 employees** in any calendar year are required to provide employees with **up to 40 hours of paid sick leave** each calendar year.
- Employers with **100 or more employees** in any calendar year are required to provide employees with **up to 56 hours of paid sick leave** each calendar year.

Nothing in this law prevents an employer from providing more sick leave, paid or unpaid, in excess of what is required as part of the paid sick leave law. Additionally, if you already provide your employees with sick leave that meets or exceeds the requirements and satisfies the accrual, carryover, and reasons for use defined below – then you’re likely in good shape.

The law clarifies that a **calendar year** will be defined as the **12-month period from Jan. 1 to Dec. 31**. For all other purposes, such as usage and accrual, a year is defined as above **or** as a regular and consecutive 12-month period, as determined by the employer.

Sick Leave Accrual Rate

Employees must accrue sick leave at a rate of not less than **one hour per every 30 hours worked, beginning at the start of their employment or by Sept. 30, 2020, whichever is later**. Employers have the **option** to provide the full amount of sick leave in a **lump sum** at the **beginning of the calendar year**.

Usage

Employers are not required to allow the use of accrued sick leave until Jan. 1, 2021. However, upon that date, **employees can request, verbally or in writing**, to use accrued sick leave for the following purposes:



- A mental or physical illness, injury, or health condition of the employee or the employee's family member, regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time that the employee requests such leave.
- The diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member.
- An absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking: (Someone who has committed any of the above is not eligible for leave)

(a) To obtain services from a domestic violence shelter, rape crisis center, or other services program.

(b) To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members.

(c) To meet with an attorney or other social services provider to obtain information and advice on and prepare for or participate in any criminal or civil proceeding.

(d) To file a complaint or domestic incident report with law enforcement.

(e) To meet with a district attorney's office.

(f) To enroll children in a new school.

(g) To take 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.

The **minimum increment** for the use of sick leave an employer can establish **cannot be more than four hours**, and employees need to be paid at **their regular rate of pay** or the **applicable minimum wage, whichever is greater**, for the use of paid sick leave.

When an employee returns to work from sick leave, the employee needs to be restored to the position they held prior to taking the sick leave and they must receive the same pay and other terms and conditions of employment.

Definitions Under 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 legal guardian of an employee, or 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 child of an employee standing in loco parentis.



Must Unused Sick Leave be Carried Over?

An employee's unused sick leave **must** be carried over to the following year, provided that:

- An employer with **fewer than 100 employees** may **limit the use of sick leave to 40 hours per calendar year**, and an **employer with 100 or more employees** may **limit the use of sick leave to 56 hours per calendar year**.

Must Unused Sick Leave be Paid at Separation?

Employers are **not** required to pay an employee for unused sick leave upon the employee's **voluntary or involuntary separation from employment**.

What Recordkeeping is Required of Employers?

Upon an **employee's request**, the **employer must provide** a summary of the amount of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

This information must be provided **within three days of the request** being made **verbally or in writing**. Furthermore, employers are required to maintain accurate payroll records for a **minimum of six years** under existing law; those records must now include the amount of sick leave provided to each employee.

Next Steps

Covered employers should begin **developing their sick leave policy** and **implementing methods to track accrual and usage**.

For assistance, please contact your TBM Client Service Representative.

