

NEW YORK ENACTS PAID SICK LEAVE REFORM

On April 3, 2020, New York State Governor Andrew Cuomo signed the fiscal year 2021 budget, which included an overhaul of statewide paid sick leave requirements under the New York State Labor Law. Under the new law, all employers must provide sick leave to their employees. Employees will begin accruing sick leave on September 30, 2020, and will become eligible to use accrued leave on January 1, 2021. In advance of September 30, employers should review their sick leave and PTO policies to ensure compliance. In the interim, the New York State Department of Labor is expected to issue additional regulations and further guidance.

The law requires:

Amount of Leave

The amount of leave an employer must provide, and whether it must be paid or unpaid, is based on a combination of the employer's size and income:

- Employers with 4 or fewer employees and a net income of \$1 million or less in the previous tax year must offer 40 hours of unpaid sick leave each calendar year.
- Employers with 4 or fewer employees and a net income of greater than \$1 million dollars in the previous tax year must offer 40 hours of paid sick leave each calendar year.
- Employers with between 5 and 99 employees must offer 40 hours of paid sick leave each calendar year, regardless of income.
- Employers with 100 or more employees must offer 56 hours of paid sick leave each calendar year, regardless of income.

For the purpose of determining an employer's size, the law defines a "calendar year" as the 12-month period from January 1 to December 31. For all other purposes, including accrual and use of paid or unpaid leave, a "calendar year" is defined as either the 12-month period from January 1 to December 31 or any regular and consecutive 12-month period, as determined by the employer.

Accrual, Usage, Compensation, and Carryover

Whether paid or unpaid, sick leave must accrue at a rate of at least 1 hour per every 30 hours worked. Alternatively, employers may choose to provide the entire amount of leave in a lump sum at the beginning of a calendar year, but cannot later reduce or revoke any sick leave if the employee does not work enough hours to accrue that amount.

Employers may set reasonable minimum increments for the use of sick leave, which may not be greater than four hours. Further, employees must be compensated for sick leave at the greater of (1) their regular rate of pay; or (2) the applicable minimum wage.

An employee's unused sick leave must carry over to the following calendar year. But, employers with fewer than 100 employees may limit annual usage to 40 hours, while employers with 100 or more employees may limit annual usage to 56 hours.

Covered Uses for Sick Leave

Starting January 1, 2021, employers must permit employees to use accrued sick leave for each of the following purposes:

- Mental or physical illness, injury, or health condition of an employee or employee's family member, regardless of whether the condition has been diagnosed or requires treatment at the time the employee requests leave.
- 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, an employee or employee's family member.

- Absence from work for certain needs related to an employee or employee's family member having been the victim of domestic violence, a sexual offense, stalking, or human trafficking. This includes, among other things, obtaining services from a domestic violence shelter or rape crisis center, meeting with law enforcement or an attorney to facilitate participation in legal proceedings, or taking any other action to maintain the health and safety of the employee or employee's family member.

Under this section of the law, a "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" includes biological, foster, step or adoptive parents, along with legal guardians of an employee or any person who stood *in loco parentis* when the employee was a minor child. Moreover, "child" includes biological, adopted, or foster children, as well as a legal ward or a child of an employee standing *in loco parentis*.

Proof of Covered Use

Employers cannot require disclosure of confidential information as a condition of providing sick leave. This includes information related to a mental or physical illness, injury, or health condition of an employee or employee's family member, or any information related to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as discussed above.

Effect on Existing PTO Policies & Collective Bargaining Agreements

Any employer who already provides employees with an amount of leave meeting or exceeding these requirements need not provide any additional leave. However, the employer's policy must otherwise satisfy the accrual, carryover, and usage requirements implemented by this law.

All collective bargaining agreements entered into on or after September 30, 2020 may provide "comparable benefits" in the form of leave, compensation, or other employee benefits – or some combination thereof. Any such collective bargaining agreement must specifically acknowledge the provisions of this law.

Interaction with Local Law

Any city or municipality with a population of one million or more may enact laws or ordinances that meet or exceed the requirements of this law. Further, any existing sick leave programs enforced by a city, county, town, or other municipality remain in effect. Specifically, employers operating in New York City and Westchester County must continue to provide leave that meets or exceeds the requirements of the New York City Earned Safe and Sick Time Act and the Westchester County Earned Sick Leave Law, respectively.

Other Protections

Employers may not retaliate, discriminate against, or penalize any employee for requesting or utilizing sick leave. Also, upon returning from sick leave, employees must be restored to the same position, with the same rate of pay and identical terms and conditions of employment.

Recordkeeping & Documentation Requirements

Employers must record the amount of sick leave provided to each employee, and must maintain these records for a period of 6 years. Also, within 3 business days of any request by an employee, employers must provide a summary of all sick leave accrued and used by the employee.

If you have questions or require assistance in reviewing existing policies, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

Contact Information:

111 Great Neck Road	411 Hackensack Avenue	350 Bedford Street	677 Broadway
Great Neck, NY 11021	Hackensack, NJ 07601	Stamford, CT 06901	Albany, NY 12207
516.393.2200	201.883.1030	203.316.0483	518.242.7582

If you would like to receive Legal Alert mailings from Garfunkel Wild, P.C. electronically in the future, or if you would like to be removed from the mailing list, please contact us at info@garfunkelwild.com. This material is intended as informational only and the content should not be construed as legal advice. Readers should not act upon information in this material without first seeking professional advice. This material may be considered Attorney Advertising under certain rules of professional conduct. © 2020 Garfunkel Wild, P.C.