

WE ARE YOUR DOL



# NEW YORK PAID SICK LEAVE

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.

## 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 <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.*

## ACCRUALS

Employees begin accruing leave on September 30, 2020. Leave must be accrued at a rate not less than one hour for every thirty hours worked.

## PERMITTED USES

After January 1, 2021, employees may use accrued leave following a verbal or written request to their employer for the following reasons impacting the employee or a member of their family for whom they are providing care or assistance with care:

## Sick Leave

- For mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave; or
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care.

## Safe Leave

- For an absence from work when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking, or human trafficking:
  - to obtain services from a domestic violence shelter, rape crisis center, or other services program;
  - 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;
  - 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;
  - to file a complaint or domestic incident report with law enforcement;
  - to meet with a district attorney's office;
  - to enroll children in a new school; or
  - 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.

## WHO IS ELIGIBLE

All private-sector employees in New York State are covered, regardless of industry, occupation, part-time status, and overtime exempt status. Federal, state, and local government employees are **NOT** covered, but employees of charter schools, private schools, and not-for-profit corporations are covered.

## LEAVE INCREMENTS

Employers are permitted to require that leave be used in increments (e.g., 15 minutes, 1 hour, etc.) but may not set the minimum increment at more than 4 hours.

Employers are permitted to limit the leave taken in any year to the maximum amount required to be provided to such employee (e.g., 40 hours for midsized employers and 56 hours for large employers). Any limitations permitted by the law must be put into writing and either posted or given to employees.

Employers must notify employees in writing or by posting a notice in the worksite, prior to the leave being earned, of any restrictions in their leave policy affecting the employees' use of leave, including any limitations on leave increments.

## RATE OF PAY

Employees must be paid their normal rate of pay for any paid leave time under this law, or the applicable minimum wage rate, whichever is greater. No allowances or credits (e.g., tip credits) may be claimed for paid leave hours, and employers are prohibited from reducing an employee's rate of pay for sick leave hours only.

## ALTERNATIVE ACCRUAL SYSTEM

As an alternative to employees accruing 1 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.

## COLLECTIVE BARGAINING AGREEMENTS

Collective bargaining agreements that are entered into after September 30, 2020 are not required to provide the sick leave described above so long as the agreement provides for comparable benefits/paid days off for employees and specifically acknowledges the provisions of Labor Law 196-b. For the purposes of collective bargaining agreements, the Department of Labor considers leave time which has fewer restrictions on its use to be comparable to that required by this law, regardless of the label of such leave (e.g., annual or vacation time) and multiple leave benefits which meet the use requirements of this law may be combined to satisfy the “comparable benefit” requirement. To satisfy the requirements of this law, any agreement entered into after September 30, 2020 must specifically reference Labor Law Section 196-b.

## 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 at **888-52-LABOR** or **LSAsk@labor.ny.gov**. **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.

## 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 such employee in the current calendar year and/or any previous 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)**.