

Beyond COVID: New York Enacts Permanent Statewide Paid Sick Leave Law

Apart from the many COVID-19 related issues being addressed by Gov. Andrew Cuomo and New York State legislators on a daily basis, a deal was reached earlier this month requiring most employers to provide paid sick leave to their employees. Unlike the recently enacted emergency paid leave benefits available for workers under mandatory or precautionary quarantine due to COVID-19, the new legislation will grant a permanent right to paid sick leave which will go into effect on September 30, 2020.

The new law provides covered employees the right to use sick leave for the care and treatment of themselves or a family member and to seek assistance or take other safety measures if the employee or a family member is a victim of any act or threat of domestic violence or unwanted sexual contact, stalking or human trafficking. The law provides that:

- Employers with 4 or fewer employees in any calendar year, and a net income of less than \$1 million must provide workers with up to 40 hours of unpaid sick leave in one year.
- Employers with 4 or fewer employees and a net income of more than \$1 million in the previous tax year and employers with 5 to 99 employees in any calendar year, must provide workers with up to 40 hours of paid sick leave annually.
- Employers with 100 or more employees must provide workers with up to 56 hours of paid sick leave per year.

LEAVE ENTITLEMENT

NUMBER OF EMPLOYEES	INCOME	TYPE OF LEAVE	AMOUNT OF PAID LEAVE PER CALENDAR YEAR	RATE OF PAY FOR LEAVE
4	< \$ 1 million	Unpaid	Up to 40 hours	—
4	> \$ 1 million	Paid	Up to 40 hours	Regular rate of pay or minimum wage, whichever is greater
5 to 99	—	Paid	Up to 40 hours	
100	—	Paid	Up to 56 hours	

Accrual. While the accrual provisions go into effect on September 30, 2020, employers may require employees to wait until January 1, 2021, to begin using these benefits, which employers may require employees to use in a minimum of four-hour increments. Employees accrue sick leave at a rate of not less than one hour per every thirty hours worked, beginning at the commencement of employment or the effective date of this section (9/30/20), whichever is later.

Carry-Over Provisions. Employees may carry over unused sick leave to the following calendar year, but are limited to 40 hours per calendar year if they work for an employer that has fewer than 100 employees, and up to 56 hours per calendar year for an employer

that has 100 or more employees. Employers are not obligated to pay an employee for unused sick leave upon separation from employment.

Recognized Reasons. Under the law, employees have the right to take sick leave for the following reasons:

1. For a mental or physical illness, injury or health condition of the employee, the employee's family member, (which is broadly defined under the law), 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;
2. For the diagnosis, care or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventative care for, the employee or the employee's family member; or
3. For absences from work due to:
 - (a) an employee or employee's family member having been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking,
 - (b) participation in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members,
 - (c) 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) file a complaint or domestic incident report with law enforcement,
 - (e) meet with a district attorney's office,
 - (f) enroll children in a new school, or
 - (g) 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.

Additional Leave Benefits. Employers are not prohibited from providing sick leave, paid or unpaid, in excess of the requirements set forth above or from providing additional benefits to employees beyond those provided under the new law.

Frontloaded Benefits. Employers may provide employees with the total amount of sick leave required to fulfill its obligations under the Act at the beginning of the calendar year. If the employer frontloads the leave allotment they may not reduce or revoke any such leave based on the number of hours actually worked by the employee during the calendar year.

Medical or Safety Inquiries. Be cautious about inquiries that may violate the law. Employers may not require the employee to disclose confidential information related to the employee or family member's illness, injury or health condition or related to absence from work due to domestic violence, a sexual offense, stalking or human trafficking.

No Retaliation. Employers may not retaliate against employees for requesting paid sick leave. For example, retaliation may include any threat, discipline, discharge, demotion, suspension or reduction in an employee's hours or any other adverse employment action against an employee that deters the employee from exercising his/her rights guaranteed under the law. With that said, upon return to work, an employee who exercised his/her right under this law must be restored to the position the employee held prior to any sick leave taken with the same pay and other terms and conditions of employment.

Interplay with other Local Laws. New York City and Westchester County have enacted their own paid sick leave laws. The new law states that paid sick leave benefits provided in those localities shall not be diminished or limited as a result of the new law.

Payroll Records. Lastly, employers' payroll records which are required to be maintained for at least six years under the New York Labor law must include the amount of sick leave provided to each employee.

KD IS HERE TO HELP

Employers in the State of New York must update their handbooks with a compliant paid sick leave policy in advance of the September 30, 2020 effective date of the new law. The experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to assist. We will continue to keep you apprised of any further developments impacting the workplace, and are available to answer any questions and provide additional guidance to help you navigate the ever-changing landscape of the paid sick leave laws during the COVID-19 pandemic and its interplay with any other local, state or federal laws. For more information, please contact an experienced member of KD's Labor & Employment Law Practice Group.