

# Client Alert **Employment & Labor**

## **Sick and Tired of Sick Leave Laws? New York Employers Need to Get Ready for New State Paid Sick Leave Requirements**

On April 3, 2020, during the early days of the COVID-19 pandemic, and amidst the flurry of federal and state laws addressing those issues, New York State quietly enacted mandatory sick leave legislation as part of a comprehensive budget law. This new New York State paid sick leave law (PSLL) is separate from, and in addition to, the New York State paid leave law for individuals affected by mandatory or precautionary orders of quarantine or isolation due to COVID-19. Employers, including those whose existing policies comply with New York City and Westchester County paid sick leave requirements, should review the requirements of the PSLL summarized below and should revisit their sick day policies due to differences between the laws. The PSLL takes effect on September 30, 2020, though employees may not begin using any accrued sick leave until January 1, 2021.

### **Coverage and Requirements**

The amount of leave, and whether it is paid or unpaid, is determined by a private employer's size in a given calendar year and net income in the prior tax year. While the law does not indicate whether an employer must count employees located outside of New York State for PSLL purposes, the applicable definition indicates that both full-time and part-time employees must be counted.

- Employers with 4 or fewer employees in a calendar year and a net income of \$1 million or less in the previous tax year must provide each employee with at least 40 hours of unpaid sick leave each calendar year.
- Employers with 4 or fewer employees in any calendar year and a net income of more than \$1 million in the previous tax year must provide each employee with at least 40 hours of paid sick leave each calendar year.
- Employers with between 5 and 99 employees in any calendar year must provide each employee with at least 40 hours of paid sick leave each calendar year.

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- Employers with 100 or more employees in any calendar year must provide each employee with at least 56 hours of paid sick leave each calendar year.

Notably, for larger employers with 100 or more employees, the PSL is more favorable to employees as compared with the New York City paid sick leave law which only requires 40 hours, therefore providing 16 additional hours of paid sick leave.

### Reasons for Leave

Qualifying reasons for the use of sick leave include:

- a mental or physical illness, injury or health condition of the employee or a family member, regardless of whether such illness, injury or condition has been diagnosed or requires medical care at the time that leave is requested;
- the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or the need for medical diagnosis of, or preventive care for the employee or a family member; or
- an absence from work when an employee, or an employee's family member, who has experienced domestic violence, a sexual offense, stalking, or human trafficking receives assistance or attends to related matters after such an event, such as counseling, legal proceedings, or relocation, or takes 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.

"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. A "parent" includes a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood *in loco parentis* when the employee was a minor child. A "child" means a biological, adopted or foster child, a legal ward, or a child of an employee standing *in loco parentis*. In this respect, the PSL is more restrictive than New York City's paid sick leave law, which includes individuals who are the "equivalent" of family members.

### Accrual and Use

Employees accrue sick leave at a rate not less than one hour for every 30 hours worked. Alternatively, the law permits employers to front load the total amount of sick leave at the beginning of the calendar year, provided that employers do not reduce the available amount of sick leave based on the number of hours actually worked by the employee.

Under the law, unused but accrued sick leave can be carried over to the following year. It is unclear if the state will clarify whether the carryover provision will apply to an employer choosing to front load sick leave at the beginning of the year. An employer with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar

year. An employer with 100 or more employees may limit the use of sick leave to 56 hours per calendar year. Employers may set a “reasonable” minimum increment for the use of sick leave, but that incremental use cannot exceed four hours.

Employers cannot require employees who request to use sick leave to disclose any confidential information pertaining to the request. Employees utilizing sick leave must be returned to the same position they held immediately prior to the use of sick leave with the same pay and other terms and conditions of employment. In addition, the law prohibits retaliation for use of such leave.

### Interaction with Other Policies

If an employer already has an existing paid leave policy that satisfies all of the requirements under the PSLL (accrual rate, carryover, and permissible uses), the employer is not required to provide additional sick leave. Collective bargaining agreements may provide for benefits comparable to what the law requires – in the form of leave, compensation, or other benefits.

### Recordkeeping

Employers must maintain records of sick leave provided to each employee for at least six years. Moreover, if an employee makes an oral or written request, an employer must provide a summary of sick leave accrued and used by the employee during the current and previous calendar years.

### Takeaways

New York employers should promptly review their sick leave policies to confirm that such policies meet the new law’s requirements. As with other paid sick leave laws enacted in New York City and New Jersey, the devil is in the details and coordinating with other paid time off policies can be complicated. The New York State Department of Labor has not yet issued regulations or guidance, which will likely be forthcoming.

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Please reach out to our Employment and Labor Practice Group if you would like any guidance on the issues raised in this alert.

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