

New York Enacts Paid Sick Leave Law

The budget bill signed by Governor Cuomo on April 3, 2020, includes an amendment to the Labor Law that requires New York employers to provide sick leave to employees. The legislation becomes effective 180 days after it was enacted, which appears to be September 30, 2020. Public employers are not covered by the sick leave legislation.

The amount of sick leave an employer is required to provide and whether the sick leave is to be paid or unpaid depends on the size and net income of the employer:

- Employers with 4 or fewer employees and a net income of \$1 million or less in the prior tax year must provide employees with up to 40 hours of unpaid sick leave in each calendar year;
- Employers with 4 or fewer employees and a net income of greater than \$1 million in the prior tax year must provide employees with up to 40 hours of paid sick leave in each calendar year;
- Employers with between 5 and 99 employees must provide up to 40 hours of paid sick leave in each calendar year; and
- Employers with 100 or more employees must provide up to 56 hours of paid sick leave in each calendar year.

The number of employees that an employer has is determined on a calendar year basis, which for this limited purpose means the 12-month period from January 1 to December 31. For all other purposes under the statute (such as, for instance, the accrual or granting of sick leave), a calendar year means either the 12-month period from January 1 to December 31 or a regular and consecutive 12-month period as determined by the employer.

Employees accrue leave at a rate of not less than 1 hour for every 30 hours worked. If an employer decides to provide its employees with the total amount of sick leave required at the beginning of the calendar year, the employer cannot reduce the amount of sick leave provided based on the number of hours actually worked by an employee during the year. Employees begin to accrue paid sick leave when the law goes into effect or upon the employee's date of hire, whichever is later. Although employees may begin accruing leave prior to January 1, 2021, employers are not required to begin to allow employees to take sick leave under the statute until January 1, 2021.

Employers may set a reasonable minimum increment for the use of sick leave, but it may not exceed 4 hours. Unused sick leave may be carried over by employees to the following calendar year, but employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year, and employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year. Employers are not required to pay employees for unused sick leave upon separation from employment.

Sick leave may be taken:

- For a mental or physical illness, injury, or health condition of an employee or an employee's family member, regardless of whether the illness, injury, or condition has been diagnosed or requires medical care at the time that leave is requested;
- For the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of an employee or an employee's family member, or for preventative care for an employee or an employee's family member; and

- For an absence from work for the following reasons related to an employee or an employee's family member being the victim of domestic violence, a family offense, a 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, to temporarily or permanently relocate, or to take other actions to increase the safety of an employee and/or an employee's family member;
 - To meet with an attorney or other social services provider in relation to a criminal or civil proceeding;
 - To file a complaint or domestic incident report with law enforcement;
 - To meet with the district attorney's office; or
 - To take any other actions necessary to ensure the health or safety of an employee or an employee's family member, or to protect those who associate or work with the employee.

Under the law, the term "family member" means an employee's child, spouse, domestic partner, parent, sibling, grandchild, grandparent, and the child or parent of the employee's spouse or domestic partner. Employers may not require an employee to disclose confidential information relating to the reason for the use of sick leave. The law also protects employees from retaliation for using sick leave and requires employers to restore an employee returning from sick leave to the same position, with the same pay and other terms and conditions of employment.

Any employer that has adopted a sick leave policy or paid time off policy that provides employees with an amount of leave which meets or exceeds the amount required by the statute and satisfies the accrual, carryover, and use requirements of the statute is not obligated to provide any additional sick leave under the statute. Employers that enter into a collective bargaining agreement on or after the effective date of the law that provides comparable benefits to employees in the form of leave, compensation, other benefits, or some combination thereof are also not required to provide additional sick leave benefits, as long as the agreement specifically acknowledges the requirements of this law.

Notably, the statute requires that any paid sick leave be compensated at an employee's "regular rate of pay" or the applicable minimum wage, whichever is greater. It is not clear from the statute whether the term "regular rate" will be interpreted in the same manner as the term is defined under the Fair Labor Standards Act. If it is, employers may be required to include certain forms of compensation in the sick leave payments other than just the employee's base hourly wage, such as commissions or non-discretionary bonuses. Prior to the effective date of the law, the Commissioner of Labor will likely issue regulations and other interpretive guidance, which may shed some light on this issue.

Employers should review their paid time off and sick leave policies at this point to determine how, if at all, they may need to be revised to comply with the new law. However, before finalizing policies and communicating them to employees, it may be worthwhile to wait for the issuance of regulations and guidance from the Department of Labor.

If you have any questions about this Information Memo, please contact [Nicholas P. Jacobson](#), any of the [attorneys](#) in our [Labor and Employment Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

