

Bond

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The Impact of the New State Sick Leave Law for New York Employers



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Presenters



Andrew D. Bobrek
Member
abobrek@bsk.com
Syracuse, NY



Theresa E. Rusnak
Associate
trusnak@bsk.com
Rochester, NY



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Agenda

- Introduction to New York Paid Sick Leave (“NYPSL”)
- Basics:
 - Accrual
 - Carryover
 - Use
- Special Considerations:
 - Existing Leave Policies
 - Collective Bargaining Agreements
 - Other Sick Leave Laws
- Documentation
- Answering Your Questions



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Introduction



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Introduction: NYPSL

- Passed as part of the 2021 NY State Budget, in early April 2020.
- Modeled after NYC Paid Sick and Safe Time legislation.
- Accruals of NYPSL must begin on September 30, 2020.
- Use of NYPSL must begin on January 1, 2021.



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Introduction: NYPSL

- As written, legislation does not contain exception for:
 - Part-time
 - Temporary
 - Casual
 - Student
 - Seasonal, or
 - Per diem employees
- NYPSL applies to all private employers, regardless of size.
- Does NOT apply to public employers.
- Job Restoration / Non-Discrimination / Non-Retaliation requirements



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Introduction: NYPSL

- NYPSL requirements are based on the size/income level of the employer:

Private Employer Size	PSL Required
4 or fewer employees (net income \$1M or less)	40 hours of <u>un</u> paid sick time
4 or fewer employees (net income <u>greater than</u> \$1M)	40 hours of paid sick time
5-99 employees	40 hours of paid sick time
100 or more employees	56 hours of paid sick time

- To determine number of employees, use the prior calendar year.



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NYPSL: Basics



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Accruals

- Must begin on September 30, 2020
- NYPSL accrues at a rate of 1 hour earned per every 30 hours worked.
- OR the employer may elect to “frontload” the leave.
- Open question: Is accrual “capped” at 40 or 56 hours???



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Carryover

- Employees must be allowed to “carry over” accrued, unused leave between calendar years (or accrual year length) as follows:
 - Under 100 employees → 40 hours / year
 - 100 or more employees → 56 hours / year
- No payout required at separation.
- Open question: If an employee carries-over 40/56 hours of leave, when does she begin accruing additional, new leave???



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Use

- Must be available for use on 1/1/2021
- NYPSL Definitions:
 - “Illness,” “injury,” “health condition,” and “need for medical diagnosis” **are not** defined
 - “Family member” = 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” = 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.
 - “Child” = A biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.



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Use

- NYPSL can be used as soon as it is earned (no minimum hours requirement or employment length required in legislation)
- There are specific enumerated circumstances when NYPSL can be used:
 1. 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 health condition has been diagnosed or requires medical care at the time that an 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 preventive care for, an employee or an employee’s family member*



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Use

- There are specific enumerated circumstances when NYPSL can be used (cont.):
 3. When an *employee or an employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking*, including:
 - 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; and
 - 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



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Use

- Employers may set increments for use of the leave, but the maximum mandatory use increment cannot be more than 4 hours
- Employers may not require the disclosure of confidential information relating to a mental or physical illness, or information relating to absence due to domestic violence, stalking, etc. as a condition of providing sick leave
- Open Question: May employers require documentation validating the use for the leave?



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Special Considerations



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Existing Leave Policies

- An employer is not required to provide additional sick leave under the new law *“if the employer has adopted a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements of this section, and satisfies the accrual, carryover, and use requirements.”*
- Existing PTO and sick leave policies may be modified to account for NYPSL, with special attention paid to accrual, carryover and use.



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Collective Bargaining Agreements

- Under the statute, nothing in the law should be read to:
 - Prohibit a CBA – entered into, on or after September 30, 2020 – from, in lieu of NYSPL, providing a comparable benefits for bargaining unit employees in the form of paid days off, and such paid days off can be in the form of leave, compensation, other employee benefits, or some combination of those pay/benefits; or
 - Impede the ability of the parties to negotiate the terms and conditions of sick leave different from those in NY PSL;
 - **But**, if either of these options is exercised, the CBA “must specifically acknowledge the provisions” of NYPSL, to be codified at NYLL Sect. 196-b.



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Other Sick Leave Laws

- Federal Emergency Paid Sick Leave- COVID-19
- Expanded Family and Medical Leave- COVID-19
- New York COVID-19 Sick Leave
- New York Paid Family Leave
- Family and Medical Leave Act
- NYC Paid Sick and Safe Time
- Paid Sick Leave for Federal Contractors
- Paid Sick Leave in Other States/Cities

- Employers must ensure that they comply with all applicable requirements, and that their policies reflect the same.



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Documentation

POLICY



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Policies

- Currently, there is no requirement that an employer must have/distribute a NYPSL policy.
- However, most employers will and should revise / draft policies for their employees.
- Policies should be included in the employee handbook and distributed to employees with a signed acknowledgment.

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Policies

- Considerations:
 - Include accrual, carryover and use information.
 - Include definitions of relevant terms.
 - Policies should prohibit discrimination, harassment and retaliation for employees who use the leave or make a complaint of the same.
 - Existing policies, even if they meet the hours requirements, should explicitly be modified to include the enumerated uses of the leave.
 - Policies should reflect other leave law policies, paid or unpaid, such as federal contractor, FMLA, NY PFL, CBAs, etc. (and those policies should be modified be modified to reflect NYPSL, as well).



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Documentation

- Employers must track how much leave their employees have used and accrued.
 - In the current calendar year; and/or
 - In **any** previous calendar year
- This information must be provided upon oral or written request of the employee, within three days of the employee's request.



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Answering Your Questions



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Answering Your Questions

- Will NYSDOL publish any NYPSL guidance or regulations?
- Will Governor Cuomo “stay” this legislation?
- If an employer frontloads the 40/56 hours, does it still have to allow for leave carryover?
- How is the rate of pay defined for NYPSL?
- Does an employee have to begin to accrue NYPSL on September 30, 2020 if the employee has already used 56 hours of PTO in 2020?



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Answering Your Questions

- How is leave to be front-loaded or accrued for part-time or per diem employees?
- Is there a “financial hardship” exception for employers?
- Are non-profit-making institutions covered?
- How do I calculate the employee’s rate of pay for NYPSL leave?
- Is NYPSL leave considered “hours worked” for overtime purposes?



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Answering Your Questions

- Do I have to track usage time for exempt employees?
- Can NYPSL be taken to care for a child whose school is closed due to COVID-19?
- Can an employer use the frontloading method for employees who are in one position, and the accrual method for employees in another?
- Does an employer have to ensure that NYPSL leave is used for purposes enumerated by the law?
- If we provide 120 hours of PTO and an employee uses 100 hours for vacation, what happens if the worker then needs NYPSL time for a qualifying reason?



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Other Questions?

