

New York Employees May Begin Taking Paid Sick Leave January 1, 2021

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On April 3, 2020, New York Governor Andrew Cuomo signed into law the New York State Paid Sick Leave Law, which provides New York-based employees with up to 56 hours of paid sick leave per year. (See our previous alert [here](#).) Covered employees began accruing paid sick leave benefits at a rate of one hour for every 30 hours worked on September 30, 2020. Employees may start using their accrued sick leave benefits on January 1, 2021.

The New York State Department of Labor recently published further guidance on the New York Paid Sick Leave Law, clarifying certain issues with respect to the law:

- **Employer Coverage.** The amount of sick leave benefits employers must provide their employees is dependent upon the number of employees they have in a “calendar year.” The term “calendar year” refers to the 12-month period beginning January 1 and ending December 31.
- **Employee Coverage.** The law covers all employees physically working within the State of New York, regardless of the employer’s location, the employee’s permanence, or the employee’s immigration status.
- **Accrual.** Covered employees accrue sick leave at a rate of one hour for every 30 “hours worked,” which includes all on-call time, training time, and working travel time. Alternatively, employers can decide to front-load sick leave benefits, granting employees their annual sick leave entitlement at the beginning of the calendar year rather than having to track accrual throughout the calendar year.
- **Calendar Year.** The law places restrictions on the amount of paid sick leave an employee can take during a “calendar year.” While the law defines “calendar year” for the purposes of determining employer coverage, it permits employers to set its own calendar year, consisting of any 12-month period, for the purposes of administering its own sick leave policy.
- **Chronic Conditions and Preventative Care.** Covered employees may use accrued sick leave to treat chronic medical conditions as well as to obtain preventive medical care.
- **Carryover.** Employers must permit employees to carry over any accrued, but unused, sick leave benefits into the following calendar year.
- **Relationship to Other Leave Laws.** New York’s Paid Sick Leave Law provides employment benefits in addition to any other State or Federal leave entitlements.
- **Pay at Termination.** Employers are not required to compensate their employees for any unused sick leave benefits at the end of the employment relationship.

While the guidance clarifies certain aspects of the law, other questions remain. Specifically, for purposes of determining the number of employees an employer has and thus the amount of sick leave benefits its employees are entitled to, the guidance fails to provide definitive guidance as to whether an employer’s out-of-state employees should be counted. In addition, the law fails to note whether employers can request reasonable documentation from their employees to demonstrate that they are taking leave for proper purposes, or whether employees can carry over unused sick leave benefits where the employer front-loads the benefits. Employers can expect New York’s Department of Labor to finalize regulations in the coming weeks to address these and other open issues.

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