



All private sector workers in New York State are now covered under the state's new sick and safe leave law, regardless of industry, occupation, part-time status, overtime exempt status, and seasonal status.

The law requires employers with five or more employees to provide their employees with paid sick and safe leave. Businesses with fewer than five employees and a net income of \$1 million or less must provide unpaid sick and safe leave to employees.

KEY DATES

- **September 30, 2020:** Covered employees in New York State will start to accrue leave at a rate of one hour for every 30 hours worked.
- **January 1, 2021:** Employees may start using accrued leave.

AMOUNT OF LEAVE

Employees will receive an amount of sick leave depending on the size of their employer:

Number of Employees	Employer Sick Leave Requirements
0 - 4	If net income is \$1 million or less in the previous tax year, the employer is required to provide up to 40 hours of unpaid sick leave per calendar year.
0 - 4	If net income is greater than \$1 million in the previous tax year, the employer is required to provide up to 40 hours of paid sick leave per calendar year.
5 - 99	Up to 40 hours of paid sick leave per calendar year.
100 +	Up to 56 hours of paid sick leave per calendar year.

A January 1 – December 31 calendar year must be used for purposes of counting employees. Small employers who reported net income of less than \$1 million do not need to pay their employees sick leave, but must provide the additional allotted leave time. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

WHAT IS REQUIRED FOR COLLECTIVE BARGAINING AGREEMENTS THAT ARE ENTERED INTO ON OR AFTER SEPTEMBER 30, 2020?

The law provides that collective bargaining agreements entered into on or after September 30, 2020 may provide for different leave benefits, so long as such benefits are “comparable benefits for the employees” to those required by the law, and the agreement specifically acknowledges the provisions of Section 196-b of the Labor Law. Such acknowledgment should also specifically identify any benefits deemed comparable to the leave in the law.

DOES A COLLECTIVE BARGAINING AGREEMENT NEED TO ACKNOWLEDGE THE STATE SICK LEAVE REQUIREMENTS, OR IS A GENERAL REFERENCE SUFFICIENT?

To satisfy the requirements of this law, any agreement entered into after September 30, 2020 must specifically reference Labor Law Section 196-b. DOL recommends that the “comparable benefits for the employees” be explicitly identified and labeled as such in the agreement to avoid confusion or misunderstanding.

IF AN EMPLOYEE USES LEAVE DURING HOURS THAT WOULD HAVE BEEN OVERTIME IF WORKED, DOES THE EMPLOYER HAVE TO PAY THE OVERTIME RATE OF PAY?

No. Employees are required to be paid their normal pay for leave time under the law.

CAN AN EMPLOYER REQUIRE THAT AN EMPLOYEE LOCATE A REPLACEMENT WORKER TO COVER A SHIFT/ JOB IF THE EMPLOYEE ELECTS TO USE THEIR SICK LEAVE?

No. So long as an employee is using the sick leave for one of the reasons prescribed under the law, an employer may not require any additional preconditions.

IF AN EMPLOYER HAS MULTIPLE BUSINESS LOCATIONS WITHIN NEW YORK STATE, WITH FOUR OR FEWER EMPLOYEES AT EACH LOCATION, DOES THE EMPLOYER HAVE TO PROVIDE PAID SICK LEAVE UNDER THE LAW?

To determine the number of employees in this scenario, the employer would count the total number of employees across all locations. For example, if there were three employees who worked at one location, and four employees who worked at another location, the employer would have seven total employees, and would be required to provide up to 40 hours of paid sick time in each calendar year, for each employee.

DO EMPLOYERS NEED TO PAY EMPLOYEES FOR UNUSED LEAVE AT THE END OF THE EMPLOYMENT RELATIONSHIP?

Unless required by another agreement or policy, including the employer's own written leave policy, employers are not required under this law to pay employees for unused sick leave at the end of an employment relationship. Seasonal employees who maintain an ongoing employment relationship with their employer maintain their leave accruals through such breaks in employment.

IF AN EMPLOYER HAS BEEN ORDERED TO CLOSE TEMPORARILY DUE TO A PUBLIC HEALTH EMERGENCY, MAY EMPLOYERS USE ACCRUED SICK LEAVE DURING THE PERIOD OF CLOSURE?

Whether or not the usage of sick leave in this scenario would be fact specific depending on the type of health emergency, including the risk of contagion, and other health considerations. Accrued sick leave may be used by an employee for preventive care of a mental or physical illness, injury or health condition. Sick leave under this law is separate and additional to the quarantine leave for employees subject to a precautionary or mandatory order of quarantine or isolation related to COVID-19 (Ch. 25 of the laws of 2020), and use of COVID-19 leave does not impact or otherwise utilize an employee's paid sick leave accruals or usage. More information on COVID-19 Leave is available at paidfamilyleave.ny.gov/covid19.

WHAT DO I DO IF MY EMPLOYER ISN'T PROVIDING ME WITH SICK LEAVE AS REQUIRED BY THE LAW?

Employees may file a complaint with the Department of Labor by calling **888-469-7365**.

For more information about New York State's Paid Sick Leave, including additional FAQs, regulations, and more, please visit ny.gov/paidsickleave.