

Locke Lord QuickStudy: Reminder to New York Employers: New York's Sick Leave Law Takes Effect on September 30, 2020

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While New York employers continue to navigate the daily challenges of the COVID-19 pandemic, they must remain cognizant of updates to New York laws and their effective dates. This QuickStudy focuses on the enactment of New York's Sick Leave Law ("NYSLL"), effective on September 30, 2020, and the various new requirements it imposes on New York employers.

The NYSLL affords all employees within New York State an accrual of sick leave at a rate of at least one hour for every 30 hours worked. The law requires employers to provide employees with this sick leave time off for their own medical conditions *and* the medical conditions of their family members as well as to report incidents of domestic violence to law enforcement authorities.

Accrual occurs beginning on the *later* of (i) the commencement of employment or (ii) September 30, 2020, and the sick leave accrues depending on the employer's size and net income:

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

New York City and Westchester County employers already should have adopted sick leave and recordkeeping policies—as those counties passed sick leave laws in 2014 and 2019, respectively. However, employers who are not already providing their employees sick leave benefits that comply with or exceed those in the NYSLL must implement new or revised policies and procedures by September 30. Because the new law expands sick leave beyond the traditional types of sick leave offered by most employers (such as expanding sick leave to injuries or illnesses of family members and victims of domestic violence), it is unlikely that many employers in New York maintain existing sick leave policies compliant with the NYSLL.

In developing and implementing new or revised policies and procedures compliant with NYSLL, New York

employers must keep in mind the following:

- Although leave accrues at a rate of at least one hour per 30 hours worked, employers may choose to provide employees with the entire amount of leave (i.e., either 40 or 56, depending on their size/net income) at the beginning of a calendar year. This approach typically will reduce considerably the administrative burden of modifying the amount of sick leave accrued on a payroll-by-payroll basis. However, employers that adopt policies along those lines cannot later reduce the amount of leave provided—even if an employee does not work sufficient hours to have accrued the amount of leave allotted or resigns mid-year. Most employers that do not experience high turnover may be better off front-loading sick leave.
- Even though employees cannot use their accrued time before January 1, 2021, accrual begins on September 30, 2020 and employers must permit employees to carry their 2020 accruals into 2021.
- Employers may limit the amount of sick leave used in a specific year. In particular, employers with less than 100 employees may limit the use of sick leave to 40 hours, and employers with 100 or more employees may limit the use of sick leave to 56 hours. Employers may also set minimum increments at which sick leave must be used, not to exceed four hours.
- Employees may use accrued sick leave for –

(i) an *employee's or his or her family member's* mental or physical illness, injury, or health condition—regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time that the employee requests leave;

(ii) the diagnosis, care, or treatment of an *employee's or his or her family member's* mental or physical illness, injury or health condition; or

(iii) an absence from work when an *employee or his or her 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 “take[s] 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.”

The NYSLL defines “family member” 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. “Child” is defined to mean a biological, adopted or foster child, a legal ward or a child of an employee standing in loco parentis. “Parent” means a biological, foster, step- or adoptive parent, a legal guardian of an employee or a person who stood in loco parentis when the employee was a minor child.

- Employers cannot require the disclosure of confidential information (such as a mental or physical illness, health condition, or injury) as a condition of providing requested sick leave.
- Sick leave compensation must be at the employee’s regular rate of pay or the minimum wage, whichever is greater.
- *The NYSLL does not require employers to pay out unused sick time upon employment separation.*
- Employers who enter into collective bargaining agreements on or after September 30, 2020 must provide their employees benefits comparable to those provided under the NYSLL and those agreements must reference the same.
- Upon returning from leave, employees must be restored to the position they held prior to taking leave with the same pay and other terms and conditions of employment.
- Employers are also prohibited from discharging, threatening, penalizing, or in any other manner discriminating

or retaliating against an employee who has exercised his or her rights under the new law.

- *Resulting from the NYSLL, effective September 30, 2020, the New York Wage Theft Prevention Act requires all New York employers to maintain records for no less than six years of the “amount of sick leave provided to each employee.”* When requested, employers must provide employees within three days the amount of the employee’s accrued and used sick leave.

Employers with employees in New York should review their existing handbooks, policies, and procedures to ensure compliance with the NYSLL and other recently leave enacted laws. Nothing in this new law requires employers to duplicate benefits already provided under other federal and state leave laws, such as the Family and Medical Leave Act, the Families First Coronavirus Response Act, the Americans with Disability Act, and the [New York State Paid and Unpaid Sick Leave and Family and Disability Leave Law due to COVID-19](#). Sick leave provided under this new law should count toward the leave requirements under such other leave laws, but it is always prudent to inform employees of this implication when their need for NYSLL sick leave arises.

Finally, the New York Department of Labor has yet to release regulations or guidance on the NYSLL. We will update this QuickStudy when it does.

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