

ALERT

September 2020

New York State Paid Sick Leave Law Effective As Of September 30, 2020

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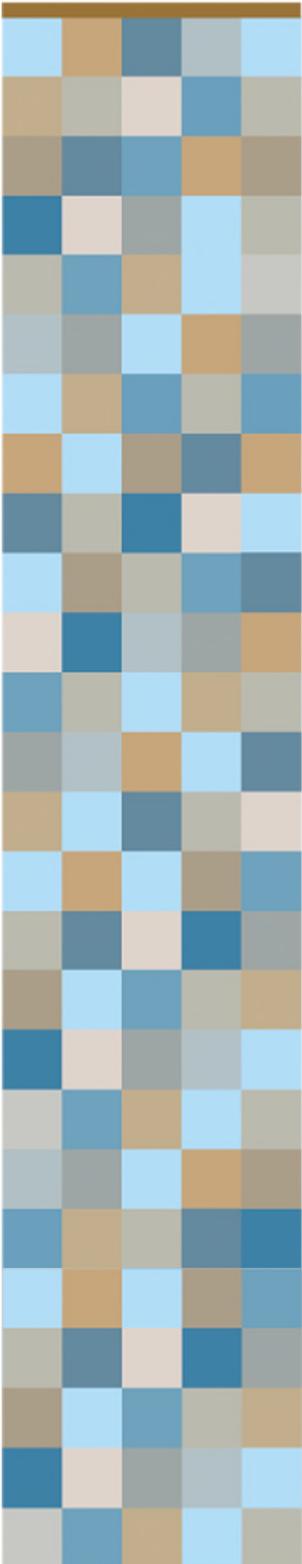
On April 3, 2020, Governor Cuomo signed into law the New York State Sick Leave law (“NYSSLL”), which requires most private employers in New York to provide mandatory paid sick leave to their employees. The law, which takes effect on September 30, 2020, provides minimum sick leave requirements employers must afford to all employees (although, as explained below, employers are not required to permit employees to use paid sick time until January 1 2021), as follows:

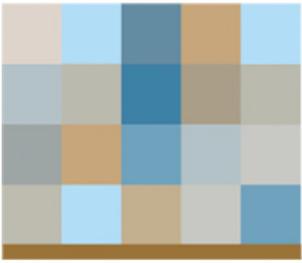
- Employers with 4 or fewer employees in any calendar year **and** a net income of \$1 million or less in the previous tax year must provide each employee with up to 40 hours of unpaid sick leave;
- Employers with 4 or fewer employees in any calendar year **and** a net income of \$1 million or greater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

A calendar year is defined as the 12-month period from January 1 to December 31 for determining an employer's size. For all other purposes, including the employee's use of sick leave, a calendar year may mean any other, regular, consecutive 12-month period, as determined by an employer. *Employers utilizing a non-traditional calendar year (anything other than January 1 to December 31) should consult with legal counsel as to whether they should advise their employees of their non-traditional calendar year in writing.*

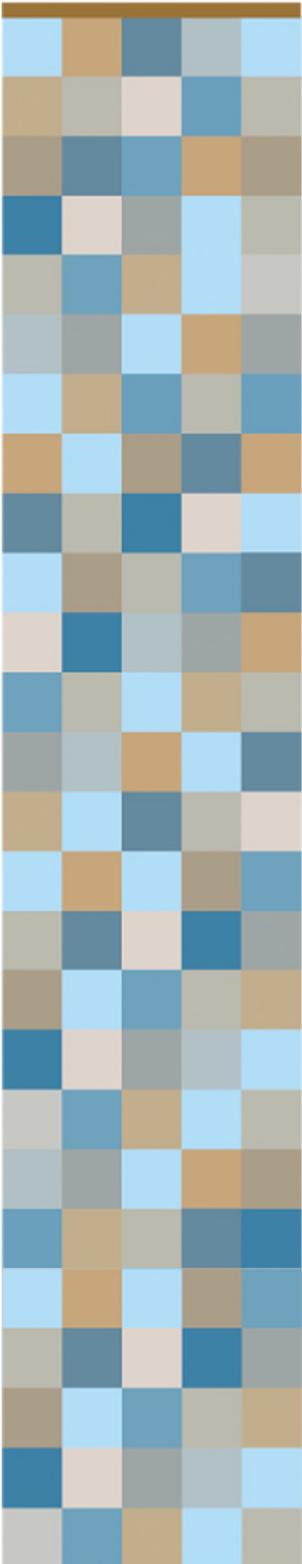
Accrual and Use of Sick Leave

Under the new law, employees will accrue this sick leave at a rate of 1 hour per every 30 hours earned. Employers must begin tracking their employees' hours worked in order to ensure compliance with the mandate beginning on September 30, 2020. In the alternative, employers have the option to "front-load" an employee's sick leave and provide the maximum allowable time at the beginning of the year, provided that they do not revoke or reduce the sick leave based on the number of hours actually worked. Employers are required to maintain contemporaneous records of the sick leave accrued and utilized by each employee for a minimum of six years.





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As employees accrue time in hours, not in days, they are entitled to utilize their sick time for partial day leave. An employer may, if it wishes, set a minimum increment of use for the leave time, however that minimum requirement cannot be greater than four hours.

Beginning on January 1, 2021, an employee will be entitled to use any accrued time (or any front-loaded time, if an employer elects to provide leave in that manner) for the following reasons:

- Employee's mental or physical illness or injury or diagnosis, care, treatment, or preventive care for employee's mental or physical illness or injury.
- Covered family member's mental or physical illness or injury or diagnosis, care, treatment, or preventive care for a covered family member's mental or physical illness or injury.
- Absences related to employee's status as a victim of domestic violence, family offense, sexual offense, stalking or human trafficking.
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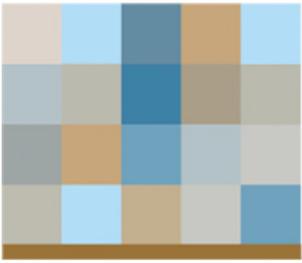
The term "family member" is broadly defined to include an employee's child (defined as a biological, adopted or foster child; a legal ward; or a child of an employee standing in loco parentis); spouse, domestic partner, parent (which is defined as a biological, foster, step or adoptive parent; legal guardian; or person who stood in loco parentis when the employee was a minor child), sibling, grandchild, or grandparent, and the child or parent of an employee's spouse or domestic partner.

Prohibitions and Employer Obligations

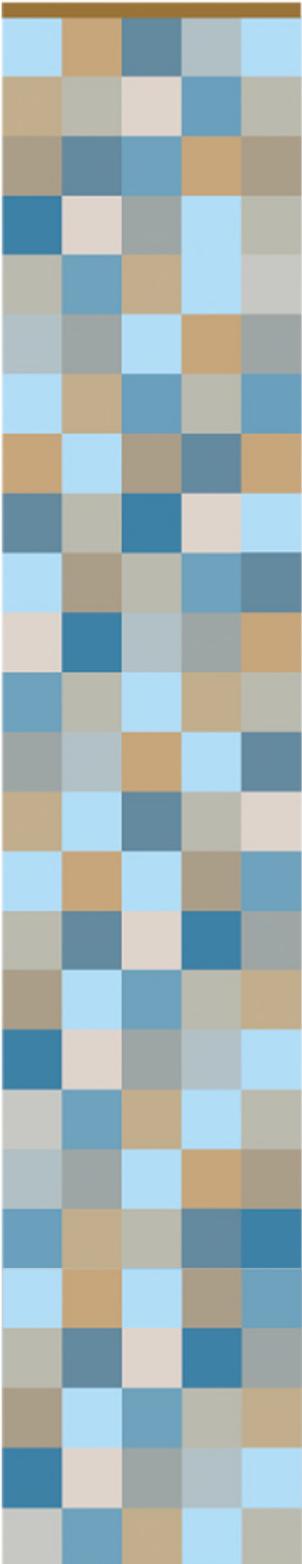
The law prohibits employers for requiring disclosure of confidential information relating to a physical or mental illness, injury or health condition, or confidential information relating to an absence due to domestic violence, sexual offense, stalking or human trafficking as a condition for providing accrued sick leave.

An employer will be required to track the amount of sick leave used by each employee. Employees may request, either verbally or in writing, that an employer provide a summary of both the amount of sick leave used by that employee, and the amount of sick leave remaining. The employer must provide such a response within three (3) business days of receiving the request.

Any unused sick leave must be carried over to the following year, however an employer may limit *use* to either 40 or 56 hours per year, subject to the number of employees and net income (as listed above). The employee must be compensated at his or her regular rate of pay for the use of all paid sick leave. An employer is not required to pay an employee



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for any unused sick leave upon such employee's termination, resignation, retirement or other separation from employment.

The law strictly prohibits any discrimination or retaliation against an employee for using or requesting sick leave under the new law. Thus, employers may not discharge, penalize, threaten or in any other manner retaliate or discriminate against any employee who exercises his or her rights under the law. Furthermore, upon an employee's return from leave, the employee must be restored to the same position with the same pay, terms and conditions of employment prior to the leave.

Collective Bargaining Agreements

Finally, employers who enter into a collective bargaining agreement after September 30, 2020 will not be required to provide additional benefits, provided that the collective bargaining agreement provides a comparable benefit under the law. Such benefits must be in the form of paid days off, leave, compensation, other employee benefits, or some combination thereof. Any agreement which provides such a comparable benefit must specifically acknowledge the provisions of the NYSSL. Employers must further ensure that they do not impede, infringe or diminish the ability of a certified collective bargaining agent to negotiate the terms and conditions of sick leave.

Other Related Laws and Statutes

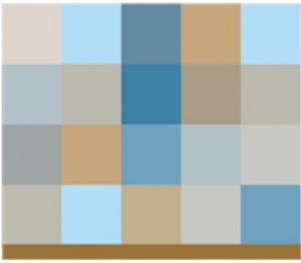
The NYSSL does not prevent any laws or ordinances enacted by cities with a population of 1 million or more that meet or exceed the requirements of the NYSSL for minimum hours or use. Accordingly, New York City's Sick Leave Law and the Westchester Earned Sick Leave Laws both remain in effect. It is not clear how the NYSSL interacts with the New York City Paid Safe and Sick Leave Law. The Department of Labor may provide further guidance as to how these leave laws will interact, however, in the interim, employers should maintain compliance with any requirements under the current leave laws and provide any leave as required by those laws to their employees.

Takeaways for Employers

Employers should review their handbooks to ensure that their pay policies comply with the new law or to update their policies accordingly. Specific issues employers should consider include:

- The number of employees and net income earned for the previous tax year. How to develop a system to log the hours of employees for purposes of leave accrual, as well as a means for tracking employee use of leave time
- Training of Human Resources and other persons who will be tasked with tracking the accrual and use of employee paid sick leave under the new law.

Moritt Hock & Hamroff LLP's Employment Team is prepared to assist businesses with developing policies to comply with the requirements of this new law.



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A. Jonathan Trafimow is a Partner of the firm where he Co-Chairs its Employment Law Practice Group. Mr. Trafimow represents employers in all areas of discrimination, retaliation, harassments and civil rights claims, and class actions. He also routinely advises employers on compliance employment laws and regulations.

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