

OCTOBER 21, 2020



## New York Paid Sick Leave guidance released

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The New York State Department of Labor (NY DOL) has released [FAQs](#) and a [webpage](#) addressing the New York State Paid Sick Leave Law (NY PSL), which took effect September 30, 2020. While the webpage merely restates the basic provisions of the new sick leave law, the FAQs address several outstanding questions, including some of those raised in our previous alert.<sup>1</sup>

For example, the FAQs make clear that an employee may use paid sick leave for routine healthcare appointments, such as for routine visits to the doctor, dentist, or eye doctor, as these are considered preventive medical care. This means an employee may use paid sick leave to take their child to an annual check-up or to cover time missed from work for their own routine eye exam.

The FAQs also confirm that an employee can choose to use sick leave during Paid Family Leave (PFL) only if the employer allows it. Taking sick leave at the same time as PFL may allow the employee to receive their full salary for all or part of the leave. An employer should decide whether or not to permit the use of paid sick leave with PFL and include its choice in its written sick leave policy.

The FAQs also address whether an employee may use paid sick leave for an absence related to COVID-19. An employee may or may not be able to use sick leave if the employer is ordered to close temporarily due to a public health emergency depending on whether the leave is taken for a use permitted under the NY PSL, such as preventive care or treatment of a mental or physical illness or health condition. The FAQs state that paid sick leave is separate from and additional to quarantine leave (emergency paid sick leave) for employees subject to a precautionary or mandatory order of quarantine or isolation related to COVID-19.<sup>2</sup>

Finally, the FAQs confirm that while employees must be allowed to carry over unused sick leave into the following calendar year, employers are not required to allow employees to use more sick leave than the annual accrual limits stated in the statute. Thus, an employee may have a leave balance in excess of the amount they are permitted to use in any calendar year, which will not be

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<sup>1</sup> [“Does your PTO policy comply with New York’s new paid sick leave law?”](#), June 26, 2020.

<sup>2</sup> See [New York State, New Paid Leave for COVID-19](#).

paid out when employment ends. As explained by the FAQs, the benefit of carrying over sick leave into a new calendar year is that an employee is able to use it right away instead of waiting to accrue leave. Those employers who choose to front-load sick leave on January 1 already provide this benefit by their choice to make all leave available to employees at once.

Open questions remain. For example, the DOL's guidance does not address how to count the number of employees (for purposes of identifying the number of paid sick leave hours) if the employer has operations inside and outside New York State, leaving it unclear whether only NY employees count or whether the employer must include all employees in any state, with only those employees in NY able to receive and use the benefit. The FAQs also do not tell us whether the no-retaliation provision of the NY PSL means that paid sick leave is "protected" in the same manner as FMLA leave (i.e., where the employer cannot count the absence against an employee for attendance or disciplinary reasons). The FAQs do clarify that an employer may discipline an employee who misuses sick leave, such as taking leave for purposes other than those permitted under the NY PSL or who lies to their employer in connection with such leave.

The NY PSL authorizes the Commissioner of Labor to issue regulations pursuant to the State Administrative Procedure Act, which provides a notice and comment period during which the public may weigh in on the proposed regulations. The newly released FAQs provide some helpful guidance while we await proposed regulations.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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