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## New York State enacts mandatory paid sick leave

By Kimberly Harding and David A. Tauster

New York has joined a growing list of states which have enacted mandatory state-wide paid sick leave laws. As we reported in a prior alert, [New York's new paid sick leave requirement](#) was originally included in the same bill that provided for emergency paid sick leave to employees who are subject to a quarantine or isolation order relating to coronavirus (COVID-19). The broader sick leave requirement was ultimately removed from the COVID-19 bill, but it was passed last week and signed into law on April 3, 2020 as a part of the state's annual budget. The law will go into effect 180 days after passage, on September 30, 2020, and employees may begin taking sick leave accrued under this law on January 1, 2021.

Under the new law, employers are required to provide all employees with sick leave at their regular rates of pay, pursuant to the following schedule:

Employer size	Employee benefit, beginning January 1, 2021
Four (4) or fewer employees, and less than \$1 million net income in previous tax year	Up to forty (40) hours of unpaid sick leave
Four (4) or fewer employees, and greater than \$1 million net income in previous tax year	Up to forty (40) hours of paid sick leave
Five to ninety-nine (5–99) employees	Up to forty (40) hours of paid sick leave
One hundred or more (100+) employees	Up to fifty-six (56) hours of paid sick leave

Employers are permitted to provide employees with their full sick leave allotment at the beginning of the calendar year, or the leave can be provided on an accrual basis, provided that employees must accrue sick leave at a rate of not less than one hour per every thirty hours worked. Accruals will begin on September 30, 2020, or upon the employee's commencement of employment, whichever is later. In addition, although all accrued but unused sick leave must be carried over year-to-year, an employer with fewer than one hundred employees will be permitted to limit an employee's use of sick leave to forty (40) hours per calendar year, an employer with one hundred or more employees will be permitted to limit an employee's use of sick leave to fifty-six (56) hours per calendar year,

and no employer shall be required to pay out any accrued but unused sick leave upon an employee's termination from employment.

Employees may use this job-protected leave for:

- a mental or physical illness, injury, or health condition of the employee or the employee's family member, regardless of whether the illness, injury, or condition has been diagnosed or requires care at the time of the leave request;
- the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of the employee or the employee's family member; or
- an absence from work for designated reasons due to the employee or the employee's family member being the victim of domestic violence, a family offense, a sexual offense, stalking, or human trafficking.

For purposes of the statute, a family member includes an employee's child (including a biological, adopted, or foster child; a legal ward; or a child of an employee standing in loco parentis), spouse, domestic partner, parent (including 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, as well as the child or parent of an employee's spouse or domestic partner.

Nothing in the statute prevents employers who provide sick leave on a more generous basis than that required from continuing to do so, provided their sick-leave policies meet the minimum requirements of the statute, and employees are permitted to use such leave for the purposes set forth above. Similarly, employers with existing sick-leave or time-off policies that meet or exceed the statutory accrual, carryover, and use requirements will not be required to provide any additional leave to employees as a result of the statute. Lastly, the statute also does not diminish the provisions of any other local sick leave law (including the New York City Earned Sick and Safe Time Act), and the statute permits New York City to enact and enforce additional legislation that meets or exceeds the standards of the statute.

The law vests the New York State Department of Labor with the authority to promulgate rules and regulations to support the new law, including regulations and guidance setting standards for the accrual, use, payment, and eligibility criteria for leave under the new law. Accordingly, there will likely be significant developments relating to the interpretation and implementation of the law over the course of the six months leading up to the effective date of the new requirement.

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