

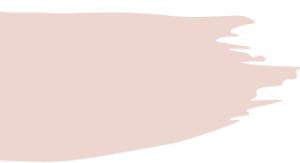


NEW YORK'S PAID SICK LEAVE REQUIREMENT:

*Updates & Clarifications for
Restaurant Employers*



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Agenda

- An Update...What We Now Know
- Sick Leave Requirement: Paid v. Unpaid Leave
- Employee Eligibility
- Accrual of Sick Leave
- Use of Sick Leave
- Carry-Over of Sick Leave
- Interaction with Employer's Existing Leave Policies
- COVID-19 Related Leave Obligations
- Questions & Answers



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An Update...What We Now Know



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Sick Leave Requirement

Size of Employer	Sick Leave Entitlement
4 or fewer employees <i>and</i> employer has net income <u>less than</u> \$1 million in previous tax year	40 Hours of UNPAID Sick Leave
4 or fewer employees <i>and</i> employer has net income <u>greater</u> <u>than</u> \$1 million in previous tax year	40 Hours of PAID Sick Leave
5-99 employees	40 Hours of PAID Sick Leave
100 or more employees	56 Hours of PAID Sick Leave

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Accrual of Sick Leave

- Two Accrual Options under the Law:
 1. 1 hour of sick leave for every 30 hours worked; *or*
 2. All Sick Leave is “Frontloaded”
- Employee accruals started September 30, 2020, or upon commencement of employment
 - Example: employee worked 480 hours in last 3 months of 2020; earned 16 hours of sick leave for use in 2021



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Carry Over of Sick Leave Benefit

- The law provides that an employee can carry over accrued but unused sick leave benefits from one calendar year to the next calendar year.
- Purpose of carry over of sick leave
- Despite allowing carry over of sick leave benefits, employees are always limited to using only 40 or 56 hours of sick leave per year.



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Use of Sick Leave Benefit

- Employees are able to use benefit as of January 1, 2021
- Important Terms Defined by Law:
 - **Family Member**—“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.”



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Use of Sick Leave Benefit

- More Important Terms Defined by Law:

- Parent**—“a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.”
- Child**—“a biological, adopted or foster child, a legal ward, or a child of an employee standing *in loco parentis*.”



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Use of Sick Leave Benefit

- Important Terms NOT Defined by Law:

- Illness
- Injury
- Health Condition
- Need for Medical Diagnosis

- *No clarification in Department of Labor regulations on definition of these terms*



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Reasons for Use of Sick Leave Benefit

- Three reasons for use of sick leave:
 1. Due to mental or physical illness, injury, or health condition of employee or employee's family member
 2. For diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member



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Reasons for Use of Sick Leave Benefit

- Three reasons for use of sick leave (*continued*):
 3. For an absence from work when employee or family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking, and needs time to:
 - a. to obtain services from a domestic violence shelter, rape crisis center, or other services program; ...



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Reasons for Use of Sick Leave Benefit

- b. to participate in safety planning, relocation, or other actions to increase safety of employee/family members;
- c. to meet with an attorney or other social services provider;
- d. to file a complaint or report with law enforcement;
- e. to meet with a district attorney's office;
- f. to enroll children in a new school; or
- g. to take other actions necessary to ensure the health or safety of the employee or family member.



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Use of Sick Leave Benefit

- Employer can set minimum increment for use of leave up to 4 hours
- Employer can ask for information about absence after 3 consecutive days
 - Attestation from licensed medical provider; or
 - Attestation from employee.
- No **Confidential Information** can ever be required



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Use of Sick Leave Benefit

- Amount of Pay Due to Employee—the *greater of*:
 - Employee's regular rate of pay; or
 - State-mandated minimum wage applicable to that employee.
- Tipped Employees—no tip credit; lost tips not due
- Employee entitled to restoration to same position, with same pay and benefits, after use of sick leave benefit



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Existing Leave Policies

- Law does not prohibit or prevent an employer from providing an amount of sick leave, paid or unpaid, greater than required by law or additional benefits
- If employer has existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carry-over or use requirements of law, no further obligation imposed on employer.



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Important Points about Sick Leave

- Law provides that employer is NOT required to pay-out accrued but unused sick leave benefits upon separation.
- Employer cannot subject employee using sick leave to any discrimination or retaliation because used benefit
- Employee cannot be required to obtain “coverage” for absence
- Recordkeeping Requirement
- Employee Information Requests



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COVID-19 Related Leave Obligations

- Employee Eligibility
- Amount of Leave Benefit Due depends on number of employees as of January 1, 2020.
 - ❖ Employers with 10 or fewer employees & net income < \$1million
 - ❖ Employers with 10 or fewer employees & net income > \$1million
OR employers with 11-99 employees
 - ❖ Employers with 100 or more employees



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Next Steps

- Law does not require that you adopt a policy...but most employers should do so.
 - Clarify interaction between existing leave benefits and sick leave benefit required by law
 - If no employer-provided benefit, establish policy to control how sick leave benefit law works for your staff



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Next Steps

- Considerations for your policy:
 - Amount of leave you must provide
 - Information about accrual, use and carryover of leave
 - Establish minimum leave increment
 - What is your Calendar Year
 - Prohibit discrimination and retaliation for use of leave
 - Modify existing policy to include leave required by law
 - Address interaction with other leave laws/requirements
 - Expressly provide benefit not paid at separation



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Next Steps

- Prepare to track employee accrual of leave in current and previous calendar year
- Prepare to track employee use of leave in current and previous calendar year
- Prepare to respond to employee inquiries about leave within 3 days of employee request
- Ensure payroll records reflect sick leave accrual



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Questions & Answers



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