



# NY MANDATORY SICK LEAVE

## Overview and Next Steps for Employers





# PRESENTER

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## DISCLAIMER

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*The information provided in this seminar is a general overview of the NY Paid Sick leave law, based on proposed regulations, and current guidance/FAQs published by the State. Nothing in this seminar should be construed as legal advice.*

*HR Works is not engaged in rendering legal services. If legal advice is required, the services of a competent labor attorney should be sought.*





# INTRODUCTION

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- Sick Leave Law first introduced in April as part of the 2021 budget
- Limited guidance and FAQs were published in early October
  - <https://www.ny.gov/programs/new-york-paid-sick-leave>
- On December 2, 2020, NY State issued proposed regulations
- On December 9, 2020, the state published the regulations in the State Register, with a 60-day comment period



## COVERAGE & ELIGIBILITY

- Applies to all ***private-sector*** employees working in NY
- Employer size determines annual leave amount and pay

Employee Count	Annual Leave Max	Paid/Unpaid
100 or more	56 hours	Paid
5 – 99	40 hours	Paid
4 or less and \$1M or more annual net income	40 hours	Paid
4 or less and less than \$1 M annual net income	40 hours	Unpaid



## DETERMINING EMPLOYER SIZE

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- *How do you determine employee size if the number of employees fluctuates throughout the year?*
  - Employer size is calculated by counting the highest total number of employees at any point during the calendar year to date
- *Do you look at the previous calendar year for determining employer size?*
  - If an employer's size increases mid-year, reaching new threshold (e.g., 100 employees) employees must begin to accrue the higher amount, but leave taken in that year may still be capped at lower threshold
  - If the employer's size is reduced, employee leave entitlements cannot be reduced until the following calendar year





## DETERMINING EMPLOYER SIZE

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- ***Who counts as an employee?***
  - Employees on paid or unpaid leave or any other type of temporary absence, are counted if the employer has a reasonable expectation that the employee will later return to active employment
  - Part-time employees are considered to be employed each working day of the calendar week
  - Employees jointly employed by more than one employer must be counted by each employer, whether or not they are on the employer's payroll record
- ***Do employees outside of NY state count?***
  - Still unanswered; conservative answer is, yes
  - Likely only employees in NY would be eligible to take leave





## ACCRUAL RATES

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- Leave must be accrued at a rate not less than one hour for every thirty hours worked
  - Accruals effective September 30, 2020 or employee's date of hire, *whichever is later*
  - Employees may begin using accrued leave effective January 1, 2021
- Employers may front load the full annual amount each leave year as an alternative to accrual
  - Ability to prorate during initial year and/or for part-time workers
  - Cannot later revoke or reduce leave based on actual hours worked







## ACCRUAL OF LEAVE

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- *Does paid leave accrue only when an employee has completed 30 hours of work?*
  - No, employee accruals of leave must account for all time worked, regardless of whether time worked is less than a 30-hour increment
  - Employers may round leave accruals to the nearest five minutes, or to the nearest one-tenth or quarter of an hour, provided that it will not result, over a period of time, in a failure to provide the proper accrual of leave to employees for all the time they have actually worked
- *Can an employer “reconcile” leave accruals on a monthly basis or some other frequency?*
  - That is an outstanding question





## REASONS FOR LEAVE

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- Employee's (or covered family member's) illness, injury or health condition
- Employee's (or covered family member's) medical or dental appointments, including preventative care
- Absences due to employee or employee's family member's status as victim of domestic violence as it relates to the need to obtain services for shelter, meet with attorney, enroll in new school, etc.

**Note:** This is *not a complete, detailed list*



## COVERED FAMILY MEMBER

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- Spouse or domestic partner
- Child
  - Biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis
  - Includes child of employee's spouse or domestic partner
- Parent
  - 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
  - Includes parent of employee's spouse or domestic partner
- Sibling
- Grandchild or Grandparent





## LEAVE INCREMENTS & PAY RATE

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- Employer may establish increments for leave usage; minimum increment may not exceed four (4) hours
- Leave usage may be capped at annual maximum required based on employer size (e.g., 40 or 56 hours)
  - Limitations must be in writing and posted or provided to employee
- Sick leave pay must be at the employee's normal rate, or the applicable minimum wage rate, whichever is greater
  - No allowances or credits (e.g., tip credits)





## CARRY OVER PROVISIONS

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- Unused sick leave must be carried over to the following year
  - Annual usage of leave may be capped at the max accrual based on employer size (i.e., 40 or 56 hours)
- Employers are not required to pay employees in lieu of taking the actual time off
- Employers are not required to pay for accrued but unused sick leave upon separation from employment
  - Impact on seasonal employees



## DOCUMENTATION

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- An employer may not require medical or other verification in connection with sick leave that lasts less than three (3) consecutive previously scheduled workdays or shifts
- Documentation is limited to:
  - Attestation from licensed medical provider supporting the need for leave; amount of leave needed; and RTW date; or
  - Employee attestation of eligibility for leave
- Employees cannot incur any costs associated with obtaining medical or other documentation to verify eligibility for use of sick leave





## IMPACT OF OTHER POLICIES

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- Existing sick or PTO policies may count toward an employer's obligations under this law ***provided that*** the policy meets or exceeds the accrual, carryover and use requirements
- Coordination with NY Paid Family Leave
  - Employee may choose to supplement sick time during PFL to receive full salary, if employer agrees
  - Employee cannot receive more than their full wages while receiving PFL benefits
- Collective Bargaining Agreements



## SICK LEAVE AND HOLIDAY PAY

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- *What's the implication of using paid sick leave before or after a company-paid holiday? Our current policy states, "To receive holiday pay, eligible non-exempt employees must work their scheduled shift before and after the holiday. Exceptions may be made in cases of bona fide illness or vacations which have been approved in advance."*
  - Proposed regulations and guidance do not specifically address this scenario
  - Likely employers could deny holiday pay for a non-exempt employee who calls in sick the day before or after a holiday, provided they treat all unplanned absences consistently
  - Conservative approach would be to grant holiday pay when an employee uses paid sick leave before or after the holiday







## OTHER EMPLOYER OBLIGATIONS

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- Leave must be granted upon oral or written request
  - No specific advance notice required under the law
- Employee notification of leave accrual, usage and restrictions (e.g., written policy or posting)
- Recordkeeping
  - Amount of sick leave accrued and used by each employee on a weekly basis must be retained for six (6) years
  - Within three (3) business days of employee request, provide summary of the amounts of sick leave accrued and used in current and/or previous calendar year
- No retaliation





## PREPARING FOR SICK LEAVE

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- Develop a sick leave policy that meets the minimum requirements of the law based on employer size; or review and update existing time off
  - **Template** NY Sick Leave policy is available from HR Works
  - If using an existing PTO policy, minimally ensure the policy meets the accrual, usage and carry-over provisions of the NY PSL
    - Policy should be reviewed by legal counsel
  - Distribute policy to all employees by January 1, 2021
  - Updates may be needed after final regulations are published
- Ensure your payroll system is set for sick leave accruals
  - Accruals must have begun as of 9/30/20 or date of hire, whichever is later
  - If frontloading time, must be available as of 1/1/21





## NY DOL RESOURCES

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- NY Paid Sick Leave Guidance: <https://www.ny.gov/new-york-paid-sick-leave/new-york-paid-sick-leave>
- NYS Paid Sick Leave FAQs and Fact Sheets: [https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL\\_FAQ\\_PaidSickLeaveFAQ.pdf](https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL_FAQ_PaidSickLeaveFAQ.pdf)
- Proposed [regulations](#)





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