



NEW YORK ENACTS STATE-WIDE SICK LEAVE LAW

April 16, 2020

Cindy B. Morgan, Esquire

On April 3, 2020, and unrelated to the COVID-19 pandemic, Governor Andrew Cuomo signed Senate Bill 7506B into law, which, among other things, amended the New York Labor Law to include Section 196(b), requiring all New York State employers to provide paid sick leave to their workers beginning January 1, 2021. New York employers should review their current sick pay policies and adjust them accordingly in the coming months to ensure compliance.

Below are the key take-aways regarding the new law.

Minimum Amount of Sick Leave – Depends on Employer Size

- **Employers with four or fewer employees in any calendar year** must provide 40 hours of unpaid sick leave in each calendar year. However, if the employer had net income greater than \$1 million in the previous tax year, that employer must provide each employee with 40 hours of paid sick leave.
- **Employers with five to 99 employees in any calendar year** must provide 40 hours of paid sick leave in each calendar year.
- **Employers with 100+ employees in any calendar year** must provide 56 hours of paid sick leave in each calendar year.

How Sick Leave Accrues

Employees must accrue sick leave at a rate of at least one hour for every 30 hours worked beginning on September 30, 2020, or the employee's first day of work, whichever is later. Alternatively, an employer may elect to provide employees with their total amount of sick leave at the beginning of the year. If an employer provides sick leave in advance, the employer cannot later reduce or revoke any sick leave based on the number of hours actually worked by the employee in the calendar year.

An employee's unused sick leave may be carried over to the following year; however, the employer is not required to provide any more than the mandated 40 hours or 56 hours of leave (depending on the size of the employer) in any given calendar year.

This newsletter is designed to provide one perspective regarding recent legal developments, and is not intended to serve as legal advice, nor does it establish an attorney-client relationship with any reader of the article where one does not exist. Always consult an attorney with specific legal issues.

Employers are not required to pay employees for any accrued, but unused, sick leave upon the employee's separation from the employer.

Reasons for Which Sick Leave May Be Taken

Upon the written or verbal request of the employee, employers must provide accrued leave for the following reasons, beginning January 1, 2021:

- mental or physical health condition of the employee or employee's family member regardless of whether the health condition has been diagnosed or requires medical care at the time the employee requests the leave
- for the diagnosis, care, or treatment of a mental or physical health condition of the employee or employee's family member
- for absence from work that occurs (i) when the employee or employee's family member has been the victim of domestic violence, a family offense, a sexual offense, stalking, or human trafficking, and (ii) for the following reasons:
 - to obtain services from a domestic violence shelter, rape crisis center, or other services program
 - to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members
 - to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding
 - to file a complaint or domestic incident report with law enforcement
 - to meet with a district attorney's office
 - to enroll children in a new school
 - to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

"Family member" is defined broadly and includes an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner.

Medical Documentation Is Not Required

An employer may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of the employee requesting leave or the employee's family member as a condition of providing leave. Additionally, employers may not request

This newsletter is designed to provide one perspective regarding recent legal developments, and is not intended to serve as legal advice, nor does it establish an attorney-client relationship with any reader of the article where one does not exist. Always consult an attorney with specific legal issues.

information related to absences from work related to domestic violence, sexual offenses, stalking, or human trafficking.

Incremental Use of Sick Leave

Employers may set a reasonable minimum amount of hours for the use of sick leave, but the minimum increment cannot exceed four hours.

Compensation for Sick Leave

Employers that must compensate their employees for sick leave must do so at their regular rate of pay (or minimum wage, if higher).

No Discrimination or Retaliation

The law prohibits employers from taking any adverse employment action against an employee because the employee requested or used sick leave. The law also appears to impose individual liability against any “agent” or “officer” of the employer who discriminates or retaliates against an employee for exercising his/her right to sick leave.

Employees returning to work after taking sick leave must be restored to their original position, including the same title, pay, and other terms and conditions of employment.

Keep Good Records

Employers must maintain records showing the amount of sick leave provided to each employee for six years and must provide employees with records of time allotted to sick leave if requested by the employee.

We’re Here to Help

New York State employers should review their sick leave and record keeping policies to ensure compliance with Section 196(b). Call or email us if you need assistance in interpreting the law.

This newsletter is designed to provide one perspective regarding recent legal developments, and is not intended to serve as legal advice, nor does it establish an attorney-client relationship with any reader of the article where one does not exist. Always consult an attorney with specific legal issues.