

New York State, Modified New York City Sick and Safe Leave Obligations Fully Effective January 1

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The New York State [Paid Sick Leave Law](#) and the amendments to the New York City [Paid Safe and Sick Leave Law](#) expanding employees' paid sick leave entitlements will go into full effect on January 1, 2021.

The state law went into effect on September 30 for the purpose of accrual of paid sick leave, and employees not previously covered by a local law can access their new sick leave banks beginning January 1.

Under the new state law and the New York City amendments:

- Employers with at least 100 employees must provide employees up to 56 hours of paid leave each year.
- Employers with fewer than 100 employees must provide 40 hours of paid leave.
- Employers with up to four employees must provide 40 hours of paid leave if the company had net income of at least \$1 million in the previous tax year.
- Employers with up to four employees with a net income of less than \$1 million in the previous tax year must provide 40 hours of *unpaid* leave.

(While written guidance is not available, state and city representatives have informally advised that only employees who work in New York State are counted in determining whether the 100-employee threshold is met.)

Under the amended New York City law, the 120-day waiting period for use of accrued time was eliminated as of September 30 (state law has no restriction on when accrued time can be used). The amendments also include a new posting requirement and the City has provided a [model notice](#). In addition, if employers request supporting documentation such as from a doctor, they must reimburse employees for costs and expenses associated with obtaining the documentation. Further, the City has modified its mandatory new hire notice. Such notice must be distributed to all employees hired on or after September 30 at the time of hire and employers also must distribute the updated notice to employees hired before September 30th by January 1st if the employer has more than 100 employees.

In addition, the amended New York City law requires employers to include accrual, usage, and balance information on wage statements or other written documentation at the time of wage payment. While this requirement originally included a safe harbor until November 30 for employers who were working in good faith to comply, the City extended this grace period to January 1.

Open Questions

The state law is vague and in addition to publishing basic guidance, fact sheets, and FAQs, the state published proposed regulations on December 9, [aiming to clarify](#) some of the open questions employers have encountered since the law's enactment. The proposed regulations address the ability to require limited supporting documentation in certain instances. Similar to the New York City amendments, the proposed regulations also prohibit employers from requiring employees to pay any costs or fees associated with obtaining medical or other verification of eligibility for the use of sick leave. The regulations, unfortunately, do not clarify whether the employer headcount determination is based on a state or national employee complement, and whether employers can require a specific amount of notice for the use of protected time, among many other open issues. Further, the regulations do not address whether an employer that frontloads the required 40 or 56 hours must carry over time despite the statute's express limitation on annual usage of 40 or 56 hours.

Next

New York State employers should ensure they have taken the necessary steps to comply with the new enactment if they previously did not have such obligations.

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New York City employers need to ensure they adjust practices and policies to account for the new state and modified city law.

(The [Westchester County sick leave law](#) is not being enforced as of January 1st, but the [Safe Time law](#) remains effective and Westchester County employers must ensure compliance with state and local law.)

Jackson Lewis attorneys are available to answer inquiries on these and other workplace requirements and assist employers in their compliance efforts.

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