

New York Budget Includes Changes to State Employment Laws

By Richard I. Greenberg & Daniel J. Jacobs

April 16, 2020

Meet the Authors



Richard I. Greenberg

(Rich)

Principal

(212) 545-4080

Richard.Greenberg@jacksonlewis.com



Daniel J. Jacobs

(He/Him)

Principal

(212) 545-4049

Daniel.Jacobs@jacksonlewis.com

Related Services

Disability, Leave and Health
Management

Wage and Hour

New York Governor Andrew Cuomo has signed the state's FY 2021 Education, Labor, Housing and Family Assistance Budget Bill into law (Chapter 56, S.7506-B, A.9506-B). The Budget Bill includes developments applicable to New York employers, covering such topics as paid sick leave, time off to vote, occupational licensing requirements, and prevailing wage requirements.

Paid Sick Leave

New York state has joined the growing list of states and localities (including New York City and Westchester County) mandating that employers provide paid sick leave to employees.

The new obligation is separate and distinct from the [Quarantine Leave Law](#) enacted in response to COVID-19.

The statewide sick leave law applies to all employers with employees in the state and goes into effect on September 30, 2020 (180 calendar days after the budget passed). Nonetheless, employers are not obligated to allow use of sick leave until January 1, 2021.

Amount of Leave

The new law provides different amounts of sick leave depending upon employer size.

Employers with fewer than 100 employees in any calendar year must provide up to 40 hours of sick leave per calendar year. Sick leave provided by such employers must be paid unless the employer had fewer than five employees in any calendar year and a net income of less than \$1 million in the previous tax year in which case sick leave can be unpaid.

Employers with 100 or more employees per calendar year must provide 56 hours of paid sick leave per calendar year.

Sick leave will accrue at a rate of one hour for every 30 hours worked, unless an employer elects to frontload sick leave at the beginning of the calendar year.

Headcount is determined based on a *calendar year*, defined as the 12-month period from January 1 to December 31. However, for purposes of accrual and usage limitations, an employer may use the period from January 1 to December 31 or establish its own calendar year, which can be any regular and consecutive 12-month period.

Use of Leave

Employers may set a reasonable, minimum increment for use of sick leave, which

cannot exceed four hours.

Sick leave may be used for any of the following reasons:

- Mental or physical illness, injury, or health condition of the employee or an employee's covered family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time of the request for leave;
- 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; or
- For an absence from work for various reasons when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking.

The new law defines "family member" broadly to include an employee's child (biological, adopted, or foster child, a legal ward, or a child of an employee standing in loco parentis), spouse, domestic partner, parent (biological, foster, step, adoptive, legal guardian, or person who stood in loco parentis when the employee was a minor child), sibling, grandchild, or grandparent; and the child or parent of an employee's spouse or domestic partner.

Employees may make requests to use sick leave orally or in writing. Employers may not require disclosure of confidential information related to the underlying reason for the request for sick leave.

Sick leave must be paid at the greater of the employee's regular rate of pay or the applicable state minimum wage.

Carryover and Payout

Unused sick leave must be carried over to the next calendar year, but the employer may limit the amount of sick leave that may be used in a calendar year to 40 hours (employers with fewer than 100 employees) and 56 hours (employers with 100 or more employees). However, employers are not required to pay an employee for unused sick leave upon their separation of employment.

Impact on Existing Policies, Union Employees

Employers with existing sick leave or time off policies that provide employees with leave that meets or exceeds the requirements of the new law as it relates to the amount of leave, as well as accrual, carryover, and usage requirements are not required to provide additional sick leave pursuant to the new law.

Employers with employees covered by a collective bargaining agreement (CBA) entered into on or after the effective date of the law may provide, in lieu of providing leave under the law, a comparable benefit to covered employees. These benefits may come in the form of leave, compensation, other employee benefits, or some combination thereof, assuming the CBA specifically acknowledges the provisions of the new law.

Notice of Amount of Time, Other Record Retention Requirements

Upon oral or written request, employers must provide a summary of the amount of sick leave accrued and used by the employee in the current calendar year (or any previous calendar year) within three business days of the request.

Employer must maintain records regarding the amount of sick leave provided to employees for six years.

Impact on Local Laws

The new law allows cities with a population of at least one million to enact and enforce local laws that meet or exceed the requirements of the state law.

Moreover, any paid sick leave provided by such local laws in effect as of the effective date of the state law are not diminished based on the new state law.

Miscellaneous

The law prohibits employers from discharging, threatening, penalizing, or in any other manner discriminating or retaliating against an employee for requesting and using sick leave.

The Commissioner of Labor has the authority to adopt regulations and issue guidance to effectuate any of the law's provisions.

Time Off to Vote

Legislation in the [FY 2020 budget](#) bill resulted in a significant increase in employer obligations relating to time off to vote by expanding the amount of paid hours an employee could be entitled to (from two hours to three hours) and removing the caveat that limited time off to employees who did not have sufficient time outside of their work schedule to vote.

The new budget modified these obligations by:

- Limiting paid voting leave to no more than two hours
- Limiting voting leave to registered voters who do not have sufficient non-working time to vote and only allowing leave for an amount of time that, when added to voting time outside of working hours, will enable the employee to vote.
 - Those with four consecutive hours either between the opening of polls and beginning of their shift or between the end of their shift and the closing of the polls are not entitled to voting leave.
 - Those with fewer than four consecutive hours are entitled to voting leave for the amount of time that, when added to non-working time, will enable the employee to vote with not more than two of such hours being paid.
- Requiring employees to provide notice to the employer of the need for leave not more than 10 or less than two days before the election day.

Occupational Licensing Requirement Change

The Budget Bill includes language removing U.S. citizenship as a requirement for the occupational licensing of Notaries, Real Estate Brokers and Salesman, and security guards.

Prevailing Wage

Under the Budget Bill, private construction projects in New York will become subject to [new prevailing wage requirements](#) effective January 2022.

Jackson Lewis attorneys are available to answer your questions and provide assistance to employers in achieving compliance.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.