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New York Enacts Statewide Paid Sick Leave Law as Part of FY 2021 Budget

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On April 3, 2020, New York Governor Andrew Cuomo signed into law the fiscal year 2021 New York State budget, which, notably for employers, includes a new statewide paid sick leave requirement. As described below, the new leave provisions, which amend the NY Labor Law, will require New York employers of all sizes to provide a certain amount of paid or unpaid sick leave to be used for certain medical and employee safety-related reasons.

The paid sick leave requirements will take effect – and covered employees will be entitled to begin accruing leave time – on September 30, 2020. However, employees may be restricted from utilizing accrued sick leave until January 1, 2021.

Amount of Sick Leave Available

Under the new sick leave provisions:

- employers with **4 or fewer employees and a net income of less than $1 million** in the prior tax year must provide employees with up to **40 hours** of unpaid sick leave.
- employers with **4 or fewer employees and a net income of greater than $1 million** in the prior tax year and employers with between **5 and 99 employees** must provide each employee with up to **40 hours** of paid sick leave per year.
- employers with **100 or more employees** will provide up to **56 hours** of paid sick leave per year.

Employees must accrue sick leave at a rate of at least 1 hour for every 30 hours worked (which is also the accrual rate set forth under the New York City Earned Safe and Sick Time Act and the Westchester County Earned Sick Leave Law). Alternatively, employers may fulfill their obligation under the law by providing the full amount of sick leave in a lump sum at the beginning of each year.

Unused sick leave carries over to the following year, though employers with fewer than 100 employees may limit the use of sick leave to 40 hours per year and employers with 100 or more employees may limit the use of sick leave to 56 hours per year.

Covered Reasons for Taking Leave

Covered reasons for taking sick leave under the law include:

- the need for diagnosis, care, or treatment of a mental or physical illness or preventative care of the employee or the employee's family member; and
- certain needs related to the employee or the employee's family member being the victim of domestic violence, sexual offenses, stalking, or human trafficking, including obtaining services from a domestic violence shelter, rape crisis center, or other services program; participating in safety planning; temporarily or permanently relocating; meeting with an attorney or participating in legal proceedings; enrolling children in a new school; or taking other actions to increase the safety of the employee or employee's family members

For purposes of this leave, a "family member" includes an employee's child (including foster child, legal ward, or equivalent legal relationship), spouse, domestic partner, parent (including a step- or foster parent, legal guardian, or equivalent legal relationship), sibling, grandchild, grandparent, and the child or parent of an employee's spouse or domestic partner.

Use of Sick Leave

The law does provide certain restrictions on the use of sick leave. Specifically:

- Employers may set a reasonable minimum daily increment for the use of sick leave of no greater than four (4) hours; and
- Unused sick leave need not be paid out upon an employee's separation or termination of employment.

Notably, upon return from sick leave, the law requires employees to be restored to the same position as held before the leave with the same pay and terms and conditions.

Interplay with Existing Leave Policies and Collective Bargaining Agreements

Employers need not provide additional leave if they already maintain a sick leave or other paid leave policy that provides employees with the same or greater amount of leave as required under the law and which otherwise satisfies the law's accrual, carryover, and usage requirements.

Importantly, the new statewide law expressly states that it does not preempt or diminish existing city- or county-level paid sick leave laws. As such, employers already covered by the New York City Earned Safe and Sick Time Act (ESSTA) or the Westchester County paid sick leave law must continue to provide employees with leave that meets or exceeds the requirements of both the statewide and local laws.

For unionized employees, in lieu of providing sick leave as expressly provided for under the law, collective bargaining agreements entered into on or after the effective date of the law (*i.e.*, September 30, 2020) may provide for a comparable benefit in the form of leave, compensation, other employee benefits (or some combination thereof), so long as the agreement "specifically acknowledge[s]" the provisions of the law.

Recordkeeping and Other Requirements

Employers will be required to keep contemporaneous records showing the amount of sick leave provided to each employee under the law. Such records must be maintained for a minimum of six (6) years.

Upon the oral or written request of an employee, an employer will be required to provide a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year. Such information must be provided to the employee within three business days of such request.

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The New York Department of Labor is authorized to issue regulations and guidance to relating to the new law, including but not limited to standards for the accrual, use, payment, and employee eligibility of sick leave. We will continue to monitor and report on any further developments.

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