

New York State Enacts Paid Sick Leave Program and Extends PAUSE Restrictions (US)

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In light of the ongoing pandemic crisis, on April 6, 2020, Governor Andrew Cuomo announced that he is extending the “PAUSE” restrictions in New York State, which means that non-essential businesses will remain closed until at least April 29, 2020.

Additionally, last week on April 3, 2020, Governor Cuomo signed the FY 2021 Executive Budget: *Making Progress Happen*. Among the legislation enacted is a paid sick leave program for workers in New York State. Under this new law, employees will be entitled to sick leave beyond the temporary leave currently provided for workers due to COVID-19.

Beginning in 2021, employers will be required to provide sick leave to employees as follows:

- Employers with 4 or fewer employees and a net income of less than \$1 million must provide up to 5 days of unpaid sick leave per year;
- Employers with 4 or fewer employees and a net income greater than \$1 million and employers with 5-99 employees must provide up to 5 days of paid sick leave per year; and
- Employers with 100 or more employees must provide up to 7 days of paid sick leave per year.

Small businesses already providing paid sick leave will be able to continue to do so.

As with other policies that have recently been introduced in New York, we can expect that additional regulations for this sick leave program will be forthcoming. However, some guidance regarding what employers can likely expect under the new law is outlined in the Governor’s budget proposal which provides that under this new law, employees would be eligible to take sick leave for:

- A mental or physical illness, injury, or health condition of the employee or the employee’s family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that the employee requests such leave;

- The 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, the employee or the employee's family member; or
- An absence from work when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking in order to:
 - Obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
 - 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;
 - File a complaint or domestic incident report with law enforcement;
 - Meet with a district attorney's office;
 - Enroll children in a new school; or
 - 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.

The proposal also states that effective 180 days after its passage, employees will be eligible to accrue sick leave at a rate of not less than 1 hour for every 30 hours worked, and an employee's unused sick leave shall be carried over to the following calendar year, with exceptions that: (i) an employer with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year; and (ii) an employer with 100+ employees may limit the use of sick leave to fifty-six hours per calendar year. Employers may also set a reasonable minimum increment for the use of sick leave, which shall not exceed 4 hours.

Sick leave need not be paid out to employees upon separation of employment. Employers who have already adopted a company-provided sick leave or time off policy that provides employees with an amount of leave that meets or exceeds the requirements and satisfies the accrual, carryover, and use requirements of this new law are not required to provide additional sick leave pursuant to this new law.



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