

ALERTS

Amendments to New York City's Paid Safe and Sick Leave Law

October 13, 2020

On Sept. 28, 2020, Mayor de Blasio signed Int. No. 2032-A into law amending New York City's Paid Safe and Sick Leave Law ("NYC Sick Leave Law"). The changes to the NYC Sick Leave Law took effect Sept. 30, 2020, unless otherwise specified below.

The amount of permitted safe and sick leave that must be provided to employees in New York City was amended to conform to the accrual and use provisions of New York State's new paid sick leave law ("State Sick Leave Law"), also effective Sept. 30, 2020. Employers must provide notice to employees of the changes under the NYC Sick Leave Law within 30 days of the effective date (no later than Oct. 30, 2020).

Employers in New York City under both State and City law will be required to provide safe and sick leave in varying amounts depending on the size of the employer, as follows:

- Employers with four or fewer employees and a net income of less than \$1 million in the prior tax year will be required to provide employees with **up to 40 hours of unpaid safe and sick leave** per year;
- Employers with between five and 99 employees and employers with four or fewer employees and a net income of greater than \$1 million in the prior tax year will be required to provide each employee with **up to 40 hours of paid safe and sick leave** per year; and
- Employers with 100 or more employees will be required to provide **up to 56 hours of paid safe and sick leave** per year.

Under the amended NYC Sick Leave Law, leave amounts greater than the amount previously provided by the NYC Sick Leave Law begin to accrue on Sept. 30, 2020, but employees cannot use such additional accrued leave until Jan. 1, 2021, which is consistent with the State Sick Leave Law. The prior NYC requirements that an employee must work 80 hours within NYC to be eligible for safe and sick leave and that newly hired employees must wait 120 days to be able to utilize accrued leave have been removed.

Employees who are exempt from New York overtime requirements are assumed to work 40 hours in each work week for purposes of safe/sick time unless their regular work week is less than 40 hours, in which case safe/sick time accrues based upon that regular work week.

The amended law also includes the following other new requirements that will require most employers to review and update their sick leave policies and practices accordingly.

Notice Requirements

The amended NYC Sick Leave Law provides that “[t]he amount of sick/safe time accrued and used during a pay period and an employee’s total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period.” Moreover, notice shall be conspicuously posted at the employer’s place of business in an area accessible to employees. Samples of notices have not been updated as of this writing, but are expected to be posted in various languages here.

Expansion of “Adverse Action” Definition

The amended NYC Sick Leave Law specifically delineates prohibited “adverse actions” that employers are prohibited from taking in response to employees’ use or attempted use of sick and safe leave. For example, the law now provides that in addition to the commonly understood “adverse actions,” such as discipline, “blacklisting” and “the maintenance or application of an absence control policy that counts protected leave for safe/sick time as an absence” could be considered “adverse actions” as well. Moreover, “[a]dverse actions include actions related to perceived immigration status or work authorization.”

Reimbursements Associated with Required Documentation

Employers that require employees to submit documentation verifying the need to use sick/safe time for three or more consecutive days must now reimburse such employees for any associated cost charged by their health care provider or other service provider.

Enforcement

Although the amended law does not create a private cause of action for individual employees, it grants the City the ability to bring civil litigation in court for pattern or practice violations of the law, or to enforce an administrative order issued pursuant to the NYC Sick Leave Law's enforcement mechanisms.

The NYC Sick Leave Law also provides that the City will have the power to impose penalties against any person (not just the employer) and grant "each and every" employee appropriate relief. Such "penalties shall be imposed on a per employee basis."

Recordkeeping

All New York State employers are now required to maintain records on the amount of sick leave provided to each employee, in addition to other payroll information, for a minimum of six years.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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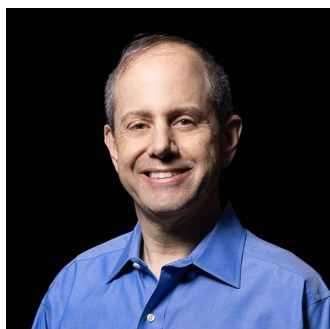
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