

## LEGAL ADVISORY

### **New York City Amends its Sick Leave Law to Align with New York's Statewide Sick Leave Law**



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On September 28, 2020, Mayor de Blasio signed into law amendments to New York City's Earned Safe and Sick Time Act (the "Act"). The amendments, which went into effect on September 30, 2020, generally align the Act with New York's recently enacted statewide sick leave law that also went into effect on September 30, 2020. However, several important differences described below exist between the two laws.

#### **Amendments Effective September 30, 2020**

- The Act's prior requirement that an employee work for 80 hours before becoming eligible for safe/sick leave has been eliminated (aligns with the statewide sick leave law).
- The Act's prior requirement that an employee wait 120 days before using accrued sick leave has been eliminated (aligns with the statewide sick leave law).
- Employers must provide notice on their New York City-based employees' payroll statements (or other written documentation provided to employees each pay period) of the amount of safe/sick time accrued and used during the pay period, and the employees' total balance of accrued safe/sick time.<sup>1</sup>
- If employers require their employees to provide documentation of the need for continued safe/sick leave after three consecutive days of leave, they must reimburse the employees for any fees the employees incur from their healthcare providers to obtain the documentation.

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<sup>1</sup> Employers that are working in good faith to implement the documentation notice will have until November 30, 2020 to comply without penalty.

## Amendments Effective January 1, 2021

- Employers with 100<sup>2</sup> or more employees must provide up to 56 hours of paid leave to their New York City-based employees each calendar year (aligns with the statewide sick leave law).<sup>3</sup>
- Employers with 4 or fewer employees must provide **paid** leave to their New York City-based employees if the employers had net income of \$1 million or more in the prior tax year (aligns with the statewide sick leave law).<sup>4</sup>

## Required Notice to Employees

Employers have until October 30, 2020 (30 days after the effective date of the amendments) to notify employees of the Act's changes. New employees must be given a Notice of Employee Rights upon the commencement of their employment. A copy of New York City's updated Notice of Employee Rights is attached to this Advisory and can be downloaded from (<https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSafeSickLeave-MandatoryNotice-English.pdf>).

Employers must conspicuously post the Notice of Employee Rights at their place of business in an area that is accessible to employees.

## Expanded Retaliation Provisions

Although employers are already prohibited from taking "adverse action" against employees for attempting to exercise their rights under the Act, the amendments expand the definition of adverse action. "Adverse action" now includes threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe/sick time as an absence that may result in an adverse action. Adverse action also includes actions related to perceived immigration status or work authorization.

## Enhanced Enforcement

The Act now empowers New York City's Corporation Counsel to sue employers based on a "pattern and practice" of noncompliance, and includes new subpoena and investigatory powers. Employers may be assessed a penalty of \$15,000 for engaging in a "pattern and practice" of

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<sup>2</sup> The Act does not indicate whether the one hundred employee number is calculated only on New York City-based employees or all employees (wherever situated). Pending guidance from New York City on this issue, we assume the calculation is determined by New York City-based employees.

<sup>3</sup> The Act previously required employers with 5 or more employees to provide up to 40 hours of paid safe/sick leave to such employees each calendar year.

<sup>4</sup> The Act previously required employers with 4 or fewer employees to provide unpaid leave to such employees.

violations of the Act. In addition, each employee not granted or allowed to use earned safe/sick leave may be awarded up to \$500.

### **Further Steps**

Employers with New York City-based employees should immediately review and update their safe/sick leave policies and handbooks to ensure compliance with these amendments, communicate these changes to their New York City-based employees, and contact their payroll providers to ensure that future payroll statements for such employees reflect the new safe/sick leave accrual, use, and leave balance, information.

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For more information about this Legal Advisory or assistance with compliance, please contact Paul Pincus at +1 212 588-0022 or [php@orllp.legal](mailto:php@orllp.legal).

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This Legal Advisory is provided for informational purposes only. It does not constitute legal or tax advice. Recipients should consult with their own legal and tax counsel before taking any actions based on the information contained in this Advisory.

# Notice of Employee Rights: Safe and Sick Leave

If you work part time or full time at any size business or nonprofit in NYC or if you work in an NYC household as a domestic worker, you have the right to safe and sick leave to care for yourself or anyone you consider family. You have this right regardless of your immigration status. Your employer must give you this notice explaining your rights.

## Amount of Safe and Sick Leave:

- All employers must provide up to **40 hours** of safe and sick leave each calendar year.

### Beginning January 1, 2021:

- **Employers with 100 or more employees** must provide up to **56 hours** of safe and sick leave each calendar year.

Your employer's calendar year is: \_\_\_\_\_ to \_\_\_\_\_  
First month Last month

You earn safe and sick leave at a rate of **1 hour for every 30 hours worked**.

You have a right to **PAID** safe and sick leave if:

- Your employer has 5 or more employees.
- Your employer has fewer than 5 employees but a net income of \$1 million or more. (effective January 1, 2021)
- You work in someone's home as a domestic worker; for example, babysitter, housekeeper, or companionship worker.  
*Note: The law covers 1 or more domestic workers working in a household.*

You have a right to **UNPAID** safe and sick leave if:

- Your employer has fewer than 5 employees and a net income of less than \$1 million.

You can carry over unused safe and sick leave to the next calendar year.

## Use of Safe and Sick Leave:

- Use it for your health, including to get medical care or to recover from illness or injury.
- Use it to care for a family member who is sick or has a medical appointment.
- Use it when your job or your child's school closes due to a public health emergency.
- Use it for your safety or for a family member's safety because of domestic violence, unwanted sexual contact, stalking, or human trafficking.

Your employer can require you to give advance notice of a planned use of safe and sick leave; for example, to attend a scheduled doctor's appointment or court hearing. You do not have to give advance notice of an unexpected use of safe and sick leave; for example, a sudden illness or medical emergency.

You have a right to privacy. You do not have to give your employer details about why you used safe or sick leave.

If you use more than three workdays in a row of safe and sick leave, your employer can require documentation. Your employer must reimburse you for any fees you pay for required documentation. Documentation should *not* include the details of your private medical or personal situation.

## Required Written Disclosures about Safe and Sick Leave:

Your employer must:

- Give you a written safe and sick leave policy that explains how to use your benefits.
- Tell you how much safe and sick leave you have used and have left each pay period.

## No Retaliation:

It is illegal to punish or fire employees for requesting or using safe and sick leave or for reporting violations.



Bill de Blasio  
Mayor

**Consumer and  
Worker Protection**

Lorelei Salas  
Commissioner

**Contact Consumer and Worker Protection to learn more or to file a complaint.**

Visit [nyc.gov/workers](https://nyc.gov/workers) | Call **311** and ask for "Paid Safe and Sick Leave"

You can also make an ANONYMOUS tip.