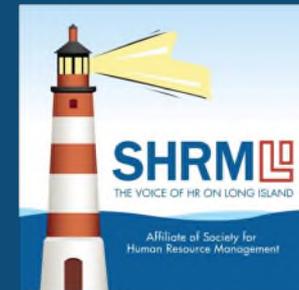


**Last Fridays “Lunch and Learn” Webinar:
April Showers Bring New Sick Leave
Laws?
An Early Primer On The NYS Paid Sick
Leave Law
April 24, 2020**

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Introductory Statement

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New York Budget Includes Changes to State Employment Laws

- ◆ While COVID-19 sweeps the world and consumes employers, changes are abound that will impact employers in the long haul.
- ◆ In the midst of the pandemic, Governor Cuomo signed the state's FY 2021 Education, Labor, Housing and Family Assistance Budget Bill into law.
- ◆ The Budget Bill includes developments applicable to New York employers, as it enacts a New York State Paid Sick Leave Law.

Mandatory 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 in response to COVID-19.

Paid Sick Leave – Who? When?

- ◆ The statewide sick leave law applies to all employers with employees in the state.
- ◆ The law goes into effect on September 30, 2020 (focus on accruals of time).
- ◆ Employers are not obligated to allow use of mandatory sick leave until **January 1, 2021**.
 - Employer policies still apply prior to 1/1/21.

Amount of Leave

- ◆ 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.
- ◆ 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.

Accrual and Usage

- ◆ 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. NYC-esque.
- ◆ 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 (upon employee's oral or written request):
 - 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.

Who is a “Family Member?”

- ◆ 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 (e.g., in-laws).

Carry Over 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).
- ◆ Employers are not required to pay an employee for unused sick leave upon their separation of employment.
- ◆ Sick leave must be paid at the greater of the employee's regular rate of pay or the applicable state minimum wage.

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 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 and 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.
 - The Sick Leave Law amends the NY Labor Law, which has a six year statute of limitations.
- ◆ Employers cannot require disclosure of confidential information. Documentation requirements coming?

Impact on Local Laws & More

- ◆ 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.
 - Think NYC.
- ◆ Anti-discrimination and retaliation provisions for requesting and using sick leave.
- ◆ Right of job restoration.
- ◆ Guidance, public outreach and regulations to follow.

Thank You

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