



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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NEW YORK STATE ENACTS PAID SICK LEAVE LAW PROVIDING UP TO 56 HOURS OF PAID LEAVE

Governor Cuomo approved the New York State Budget ("NYS Budget") on April 3, 2020. Paid Sick and Safe Time ("NYSPSL") was included. New York is the 14th state to require paid leave. NYSPSL differs from the State's recently adopted [Emergency COVID-19 Quarantine Leave](#), the benefits of which are limited to eligible employees subject to a quarantine or isolation order issued by an authorized municipal agency or entity. All labor organizations and employers should be aware of the requirements of this significant protective legislation for workers.

The NYS Budget added a new section 196-b of the State's labor law for the accrual and usage of sick leave in a variety of situations similar to that of [New York City's Earned Sick and Safe Time Act](#) ("ESSTA"). While workers cannot use the new benefits until January 1, 2021, advance planning is advisable because employees can begin accruing leave benefits on or about September 30, 2020 and qualifying events taking place after this date could trigger an employee's right to use this leave in 2021. Whether the leave is paid or unpaid, and the employee's accrual rate, depends on the size of the employer as of January 1, 2020.

Coverage: NYSPSL applies to employees and employers as defined in NY Labor Law § 190 (2) and (3), which includes, respectively, "any person" hired by "any person, corporation, limited liability company, or association employing [said] individual in any occupation, industry, trade, business or service." Governmental agencies are explicitly excluded from the definition of employer.

Accruals and Amount of Leave to Employee: Employees begin to accrue sick leave on the later of their hire date or September 30, 2020 at the rate of no less than one hour for every 30 hours worked. Employers can front-load accruals. The amount of leave and the amount of pay that an employee will receive depend on the size and income of their employer: (a) employers with less than 5 employees in any calendar year must provide up to 40 hours of *unpaid* sick leave per calendar year unless said employer recorded a net income of more than \$1 million in the previous tax year in which case the leave must be *paid*; (b) employers with 5 - 99 employees must provide up to 40 hours of *paid* sick leave; and (c) employers with 100 or more employees must provide up to 56 hours of *paid* sick leave.

Use of Benefits: On or after January 1, 2021, employees may take NYSPSL benefits. Notably, leave may be taken for *preventative care* of the employee or their family member. Specifically, and almost entirely identical to the [ESSTA reasons for leave](#), NYSPSL provides leave for the following three reasons:

- (i) for a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;
- (ii) for 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, such employee or such employee's family member;

(iii) absences where the employee a covered family member requires leave to obtain services or assistance related to being the victim of domestic violence, a sexual offense, stalking, or human trafficking, as those terms are defined under State law and listed in this subsection of the new law.

Usage, Rate and Carry Over: Employers may set reasonable minimum increments for the use of leave not to exceed four hours and it must be paid at the greater of the applicable minimum wage or the employee's regular rate of pay. Though employers may cap an employee's usage at a level that matches their accrual rate, they must allow employees to carryover any unused amounts at year-end without any cap. The new law does not require payouts of accrued and unused amounts upon separation, however, employers must comply with their current payout policies.

Effect on Other Employment Benefits and Job: The law includes anti-discrimination and anti-retaliation provisions. Additionally, upon returning from a NYSPSL covered leave, an employee is entitled to reinstatement to his or her prior position with equivalent pay and other terms and conditions of employment.

Notice Requirements: Unlike the City's ESSTA, which requires written notice of the law be given to employees and provides timelines for an employee to submit a request for leave usage, NYSPSL does not require either. Instead, upon an employee's request (oral or written), an employer shall within 3 business days summarize for the employee the amount of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year.

Exception for Existing Paid Sick Leave Policies: Employers with existing paid time off policies including those covered by the City's ESSTA will not be required to provide any additional leave if their policies "meet or exceed" the law with regard to amount of accrual, carryover, and use requirements. For private sector employees subject to a collective bargaining agreement ("CBA") entered into on or after September 30, 2020, the law specifically allows the parties to the CBA to negotiate and agree to comparable benefits or to terms of sick leave that differ from the requirements of the law so long as in either case the CBA "specifically acknowledge[s]" the NYSPSL provisions.

Coordination with Other Leave Benefits: There currently are several forms of state and local paid leave available to New York employees. Existing paid leave benefits include the statewide Paid Family Leave Law, Disability Benefits Law, and Workers' Compensation Law as well as local laws addressing safe and sick leave such as the City's ESSTA. Many of these laws overlap and provide different levels of benefits. For example, while ESSTA requires all employers with 5 or more employees to offer up to 40 hours of paid leave, NYSPSL requires an additional 16 hours of paid leave for larger employers. Additional suggestions for compliance will likely be forthcoming from the State Department of Labor's Commissioner, who is authorized under the new law to adopt regulations and issue guidance to effectuate any of the NYSPSL provisions.

Notice to Employer of PFL Leave Requirement: If the need for an employee's leave is foreseeable, an employee must provide at least 30-days advance written notice to the employer. Notice must be provided as soon as practicable in all unforeseeable cases. In addition, employees must provide the necessary documentation to substantiate the request for leave.

Next Steps for New York Employers: As a first step, employers should confirm their headcount to identify the applicable provisions of the law. While employers may not necessarily be responsible for alerting employees of their rights under this new law they are required to maintain employee accrual and use records for up to six years. Given the overlap with the City's ESSTA, employers should review existing

sick leave policies to ensure full compliance with federal, state and local disability and sick leave laws and regulations.

This Client Alert includes only a summary of key provisions of the NYSPSL. Please contact Pitta LLP if you have any questions about the application of the law and regulations to your organization.

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