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New York's paid sick-leave mandate: What businesses need to know

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New York state's new sick leave mandate went into effect Sept. 30, with employees eligible to start taking sick days on Jan. 1, 2021.

A paid sick-leave requirement for most employers were included as part of the state budget. It mandates workers at companies with more than four employees get at least five days of paid sick leave. Employees at companies with more than 100 employees get seven days.



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The time is accrued at a rate of at least one hour per every 30 hours worked, starting Sept. 30. And any unused sick leave must be carried over to the following year.

The guidance from the labor commission is still not yet out, but Glen Doherty, a labor and employment partner at Hodgson Russ in Albany, said it is expected in the coming days. That means there are still some unknowns to the mandate, including how the rules will fit in with employers in New York City and Westchester County — which have their own sick leave laws.

Doherty said many companies, especially larger ones, already have a paid-leave provision, so the biggest concern is how do to modify the existing policy in order to comply.

"For example, an employers may have a policy that says you get two weeks paid leave for vacation," Doherty said. "As long as that policy allows you to address the accrual, the carryover, and the use, you're fine. If you are an employer who does not have any existing paid-leave program, you have some work to do. You should be getting it in place now and it will be effective for employees Jan. 1."

Here is what we know the mandate requires, starting January 2021:

Employers with fewer than five employees and a net income less than \$1 million must provide workers with up to 40 hours of unpaid sick leave a year.

Employers with five to 99 employees, and those with fewer than five employees and net income of more than \$1 million, must provide workers with up to 40 hours paid sick leave annually.

Employers with 100 or more employees must provide workers with up to 56 hours of paid sick leave per year.

The time can be used for:

An employee's mental or physical illness or injury, or diagnosis, care, treatment, or preventive care for an employee's mental or physical illness or injury; or that of a covered family member.

Absences related to an employee's status as a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking; or that of a covered family member.

Robert Schofield, co-managing partner at Whiteman Osterman & Hanna, said there are still some questions around the terms of what employees can use the sick leave for because they are broader than usual leave mandates.

"We all have a sense of what sick time is for and this is broader than that. You have traditional categories that people would guess, and then you have the domestic violence aspect of things," Schofield said. "I'm hoping we will get more clarity into what that was intended to cover. You could see that as being a big area of coverage for somebody."

Schofield said one of the things that has surprised him the most is how quiet discussion of the mandate has been, as the issue may have fallen off many

employers' radars. He echoed Doherty in that the biggest unknown is how the mandate will be handled for companies that already offer PTO.

"Paragraph eight [in the language] talks about the fact that you're not required to do this if you already have a policy for sick leave or time off that meets or exceeds the requirements," Schofield said. "If I have a PTO focused on vacation, but provides every employee three weeks of vacation, does it satisfy things? This language may suggest it does. We will need clarification to know that for certain."

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