

REMINDER: New York State Paid Sick Leave Goes Into Effect Today

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On April 16, 2020, KD reported that New York State enacted a permanent, statewide Paid Sick Leave Law ("PSLL") requiring most employers to provide paid sick leave to their employees. This leave law is separate and apart from existing New York City leave laws as well as the various COVID-19 related leave policies implemented by the state and federal governments.

The New York State PSLL requires virtually all employers to provide sick days to their employees on an accrual basis. Sick days are accrued at a rate of not less than one hour per every thirty hours worked. Remember, while employees may begin accruing sick leave beginning today, September 30, 2020, employers may restrict the use of that sick leave until January 1, 2021.

Employers with 4 or fewer employees and with a net income of less than \$1 million must provide up to 40 hours of unpaid sick leave. Employers with 4 or more employees and with a net income of more than \$1 million must provide up to 40 hours of paid sick leave. Employers with 5 to 99 employees must provide up to 40 hours of paid leave and those with 100 or more employees must provide up to 56 hours of paid leave. The number of employees is measured by calendar year, and net income depends on the previous tax year.

Employees may use accrued sick time to care for themselves or their child, spouse, domestic partner, parent, sibling, grandchild, grandparent and the child or parent of the employee's spouse or domestic partner. Employers are not obligated to pay out any accrued but unused sick time. Rather, employees may carry over a certain amount of unused sick time to the following calendar year. [Click here](#) for a more detailed analysis of the New York State Paid Sick Leave Law.

Notably, it remains unclear how the New York State PSLL interacts with local sick leave laws already in place. For instance, New York City's Earned Safe and Sick Time Act (ESSTA) similarly requires employers to provide between 40-56 hours of sick leave depending on the employer's size and net income. While the State PSLL may not diminish or limit existing sick leave policies enacted by local laws, it remains unclear whether PSLL leave runs concurrently with sick leave under ESSTA, or if employees are now provided with an additional 40-56 hours of sick leave even when the underlying reason for the leave is the same and covered by both laws.

The State PSLL is thus far silent as to the kinds of notice employees must provide when using this particular leave, as well as the types of verification an employer may require to confirm permissible use of sick time. Though many questions remain unanswered until the State publishes further guidance, what is clear is that the new law prohibits employers from requiring the disclosure of confidential information relating to the employees' or their family members' circumstances giving rise to the use of sick leave. This broad prohibition could potentially leave employers vulnerable to potential claims.

We expect that the New York Department of Labor will provide clarity on these and other questions relating to the New York State PSLL as well as how it interplays with other local, state and federal sick leave laws in upcoming regulations and/or FAQs. In the meantime, Mayor Bill DeBlasio signed legislation on September 28, 2020, amending ESSTA to better align with the New York State PSLL by providing, among other things, the same sick leave usage and accrual requirements.

KD IS HERE TO HELP

New York employers must update their handbooks to include the various policies implemented this past year alone. While employers may be feeling overwhelmed with the numerous compliance challenges brought about in 2020, the experienced Labor and Employment attorneys at Kaufman, Dolowich & Voluck are available to assist. For more information, please contact an experienced member of KD's Labor and Employment Law Practice Group.