

**PRACTICAL NEWS**  
LEGAL ALERTS

**New York Guaranteed Sick Leave Goes Into Effect September 30, 2020**

New York State has joined New York City and Westchester County in mandating that employers provide guaranteed sick leave to employees. The New York State Sick Leave Law (the "NYSSLL") was passed earlier this year and goes into effect on September 30, 2020. For existing employees, the leave begins to accrue on September 30 and employees may begin using sick leave under the NYSSLL on January 1, 2021. The NYSSLL guarantees all individuals employed within New York State (full-time and part-time) sick leave each calendar year based on eligibility and employer status.

Covered employers are:

- Employers having four or fewer employees and having a net income of under \$1 million in the previous tax year, who must provide up to 40 hours of unpaid sick leave annually to each employee;
- Employers having four or fewer employees and having a net income of over \$1 million in the previous tax year, and employers having between five and 99 employees, who must provide up to 40 hours of paid sick leave annually to each employee;
- Employers having 100 or more employees, who must provide up to 56 hours of paid sick leave annually to each employee.

The NYSSLL sets the minimum guaranteed sick leave; employers may offer more paid or unpaid sick leave to employees at their discretion.

Employers have the option of frontloading the sick leave at the beginning of the calendar year, or requiring that it accrue. The mandatory accrual rate, if elected, is 1 hour of sick leave for every 30 hours worked. The NYSSLL requires employers to permit employees to carry over unused sick leave hours (up to the 40/56-hour accrual limits determined by the employer's size and income) to the following year. However, the NYSSLL allows employers to restrict the amount of sick leave that employees are permitted to use in a calendar year to the 40/56-hour accrual limits.

The NYSSLL does not require employers to pay out unused sick leave upon an employee's separation from employment. As such, individual employee handbooks will continue to dictate what transpires at the time of employment separation.

Sick leave may be taken for any of the following reasons under the NYSSLL:

- Employee's, or employee's family member's, mental or physical illness, injury, diagnosis, care, treatment, or related preventive care;
- Absences related to employee, or employee's family member, being a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking, or taking any actions to ensure the health and safety of the employee or their family member;
- Employee meeting with an attorney or other social services provider for any criminal or civil proceeding, to file a police report, or to meet with the district attorney's office; and
- Employee enrolling a child in school.

The term "family member" is broadly defined under the law to include an employee's child (biological, adopted, foster, legal ward, or child of an employee standing in loco parentis), spouse, domestic partner, parent (biological, foster, step, adoptive, legal guardian, or someone who stood in loco parentis when the employee was a minor), sibling, grandchild, or grandparent, as well as the child or parent of an employee's spouse or domestic partner.

Employers are not permitted to require employees to disclose any confidential information in verifying the need to take sick leave. However, employers should still be able to require verification that the leave was taken for a permitted purpose under the NYSSLL.

Eligible employees are entitled on return from authorized sick leave to be reinstated to their former position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. The NYSSLL prohibits retaliation or discrimination against employees who request or take sick leave.

There are new record-keeping requirements for employers under the NYSSLL. Employers must provide an employee with a summary of the amount of sick leave he or she has accrued and used in the current calendar year or any previous calendar year within three (3) business days of the employee's oral or written request. The NYSSLL also amends Section 195(4) of the New York Labor NYSSLL, to add a requirement that employers maintain payroll records for six years showing the amount of sick leave provided to each employee.

Employers who are parties to collective bargaining agreements are permitted to negotiate for benefits comparable to those provided by the NYSSLL, provided that the final agreement specifically acknowledges the provisions of the NYSSLL.

The NYSSLL is not intended to be in derogation of any similar municipal or local law that meets or exceeds these standards. Nevertheless, employers in New York City and Westchester County, where similar laws are already in effect, should await further guidance as to how the new NYSSLL will interact with those existing laws.

## CONTACT US

**Regina E. Faul**

Employment and Labor Chair

(212) 841-0575

[rfaul@phillipsnizer.com](mailto:rfaul@phillipsnizer.com)

**Elana T. Henderson**

Counsel

(212) 841-0567

[ehenderson@phillipsnizer.com](mailto:ehenderson@phillipsnizer.com)

**Laura E. Longobardi**

Counsel

(212) 841-0780

[llongobardi@phillipsnizer.com](mailto:llongobardi@phillipsnizer.com)