

CUOMO SIGNS BUDGET BILL PROVIDING SICK LEAVE FOR ALL NY EMPLOYEES BEGINNING JAN. 1, 2021

Hodgson Russ Labor & Employment Practice Alert
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The New York State Budget Bill signed by Governor Cuomo contains what New York State has touted as “the strongest Paid Sick Leave program in the nation.” Specifically, the Budget Bill amends the New York State Labor Law to require all employers, regardless of size, to provide annual sick leave to their employees. In most circumstances, the leave must be paid.

Current employees will begin accruing leave 180 days after the Budget Bill is signed, so employers should begin implementing policies and procedures to comply with the law. Employers who intend to rely on an existing sick leave or paid time off policy should review their current policy to ensure it meets all of the requirements of the new law.

The law requires:

- Employers with 4 or fewer employees: must provide 1 hour of **unpaid** sick leave for every 30 hours worked, up to 40 hours of unpaid sick leave annually. However, if such an employer has net income of more than \$1 million in the previous year, the leave must be **paid**.
- Employers with between 5 and 99 employees: must provide 1 hour of **paid** sick leave for every 30 hours worked, up to 40 hours of paid sick leave annually.
- Employers with 100 or more employees: must provide 1 hour of **paid** sick leave for every 30 hours worked, up to 56 hours of paid sick leave annually.

The leave provided by the law may be used starting on January 1, 2021, and is available for the following purposes:

- For a mental or physical illness, injury or health condition of an employee or an employee’s family member, regardless of whether that condition has been diagnosed or requires medical care at the time the employee requests leave;
- For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventative care for, an employee or an employee’s family member; and

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- For certain absences from work due to domestic violence, a family offense, sexual offense, stalking, or human trafficking, of an employee or an employee's family member.

The term "family member" is defined broadly to include the employee's child, spouse, domestic partner, parent, sibling, grandchild, and grandparent, as well as the child or parent of the employee's spouse or domestic partner.

Employers may choose to frontload the total amount of sick leave at the beginning of the year, but any employer who chooses to frontload leave may not later reduce or revoke the amount of leave provided to any employee based on the number of hours the employee actually worked. Leave also must be carried over from year to year, subject to a usage cap depending on the size of the employer—40 hours/year for employers with less than 100 employees and 56 hours/year for employers with 100 or more employees.

Employers are not required to provide additional sick leave to the extent they already have a sick leave or time off policy that provides employees with an amount of leave that meets or exceeds the requirements of the law and that satisfies the accrual, carryover, and use requirements.

It is not yet clear what, if any, documentation employees may be required to provide to support the need for leave requested under the law.

If you have any questions about the requirements of the new law or implementing related policies and procedures, please contact a member of Hodgson Russ's Labor & Employment Practice.

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