

Paid Safe and Sick Leave: What Employers Need to Know

New amendments to NYC’s Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law) take effect September 30, 2020 and January 1, 2021. If you are a private or nonprofit employer in NYC or if you employ domestic workers in NYC, read this fact sheet¹ to understand employer responsibilities. Under the Law, covered employees have the right to use safe and sick leave for:

- health, including the care and treatment of themselves or a family member; and
- safety², including to seek assistance or take other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

All Private and Nonprofit Employers and Employers of Domestic Workers Must Provide Safe and Sick Leave

| Number of Employees | Employer’s Annual Income | Amount of Leave per Calendar Year* | Paid or Unpaid Leave |
|---|---|------------------------------------|----------------------|
| 1-4 | Less than \$1 million | Up to 40 hours | Unpaid |
| | effective 1/1/2021: \$1 million or more | Up to 40 hours | Paid |
| 5 or more <i>employed by private or nonprofit employer</i> OR effective 9/30/2020: 1 or more domestic workers <i>employed by household employer</i> | N/A | Up to 40 hours | Paid |
| effective 1/1/2021: 100 or more <i>employed by private or nonprofit employer or employer of domestic workers</i> | N/A | Up to 56 hours | Paid |

*Note: “Calendar Year” means any regular and consecutive 12-month period of time determined by an employer.

If you are required to provide *paid* safe and sick leave, you must pay employees their regular hourly rate and not less than the current minimum wage.

If you have an existing policy allowing employees to use safe and sick leave, your policy must meet or exceed the requirements of the Law.

Employees Who Are Not Covered by the Law

You do not have to provide safe and sick leave to the following employees:

- Students in federal work-study programs
- Employees whose work is compensated by qualified scholarship programs
- Employees of government agencies
- Physical therapists, occupational therapists, speech language pathologists, audiologists who are licensed by the New York State Department of Education (if they call in for work assignments at will, determine their own work schedule, have the ability to reject or accept any assignment referred to them, and are paid an average hourly wage, which is at least four times the federal minimum wage)
- Independent contractors who do not meet the definition of an employee under New York State Labor Law
- Participants in Work Experience Programs
- Certain employees subject to a collective bargaining agreement³

Notice of Employee Rights

You must provide each covered employee with written Notice of their right to safe and sick leave, including accrual and use of safe and sick leave, the right to file a complaint, and the right to be free from retaliation. The Notice must state the start and end dates of your Calendar Year. Employees have a right to the Notice in English and in their primary language if a translation is available on the DCWP website nyc.gov/workers. You must also post the Notice in the workplace in an area that is visible and accessible to employees.

¹ Note the date on the back. The NYC Department of Consumer and Worker Protection (DCWP) will update this sheet as appropriate. Monitor nyc.gov/workers for updates.

² Safe leave provisions took effect May 5, 2018. Employers are not required to provide *additional* time off for safe leave; instead, employers must allow employees to use accrued leave for safe leave purposes.

³ Employees are not covered if the agreement expressly waives the Law’s provisions *and* provides comparable benefits. However, for employees in the construction or grocery industries covered by a collective bargaining agreement, the Law does not apply if the agreement expressly waives the Law’s provisions.

Safe and Sick Leave Accrual and Use

You must:

- Allow covered employees to accrue safe and sick leave as soon as they begin working. The minimum rate of accrual is 1 hour for every 30 hours worked.
- Allow employees to use safe and sick leave immediately as they accrue it.
- Give employees written documentation each pay period that shows how much safe and sick leave they have used, accrued, and have left.

Exception: If an employee is covered by a collective bargaining agreement that was in effect on April 1, 2014, the employee begins to accrue safe and sick leave under the Law beginning on the date the agreement expires.

Recordkeeping

You must keep and maintain records documenting compliance with the Law for at least three years. You must keep any information related to an employee's reasons for using safe and sick leave confidential unless the employee permits you to disclose it or disclosure is required by law. You must make the records available to the NYC Department of Consumer and Worker Protection (DCWP) upon notice at an agreed upon time.

Advance Notice

If the need is foreseeable, you can require up to seven days' advance notice of an employee's intention to use safe or sick leave. If the need is unforeseeable, you may require an employee to give notice as soon as practicable (reasonable).

Documentation

You can require reasonable documentation if an employee uses more than three consecutive workdays as safe or sick leave. You may require:

- a note signed by a licensed health care provider for sick leave; or
- documentation from a social service provider, legal service provider, member of the clergy, or notarized letter written by the employee indicating the need for safe leave.

You may not require that documentation specify the reason an employee used safe or sick leave. Disclosure may be required by other laws.

You must reimburse employees for:

- fees charged by health care providers to provide required sick leave documentation; and
- all reasonable costs or expenses to obtain required safe leave documentation.

Unused Safe and Sick Leave

An employee can carry over up to 40 hours (or, if applicable, 56 hours effective January 1, 2021) of unused safe and sick leave to the next Calendar Year. However, you are only required to let an employee use up to 40 (or 56) hours of safe and sick leave per Calendar Year.

You can choose—but are not required—to pay an employee for unused safe and sick leave at the end of the Calendar Year. Employees cannot carry over safe and sick leave if you pay them for the unused safe and sick leave AND you provide the employee with an amount of paid safe and sick leave that meets or exceeds the requirements of the Law for the new Calendar Year on the first day of the new Calendar Year.

Retaliation

You cannot retaliate against employees for requesting or using safe and sick leave. Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in an employee's hours, or any other adverse employment action against an employee that deters an employee from exercising or attempting to exercise any right guaranteed under the Law, which includes actions related to perceived immigration status or work authorization.

Complaints

If an employee files a complaint with DCWP, DCWP will contact you for a written response. You must respond to DCWP within 14 days, or sometimes sooner depending on the allegations. DCWP will work with you to resolve the complaint.

Notice of Investigation

If you receive a notice of investigation, provide all of the information and documents requested. Failure to comply may constitute a violation of the Law and may result in fines in addition to civil penalties and relief for other potential violations. Failure to produce records may negatively affect your case in the event of a proceeding at the City's administrative tribunal. You will have the opportunity to settle any violations without a trial or you can appear before an impartial judge at the City's administrative tribunal.

Updated 11/20/2020



Bill de Blasio
Mayor

**Consumer and
Worker Protection**

Lorelei Salas
Commissioner

Questions? For more information or to contact DCWP:

- Visit nyc.gov/workers for the law and Frequently Asked Questions
- Use Live Chat, available at nyc.gov/BusinessToolbox
- Email PSSL@dca.nyc.gov
- Call **311** (212-NEW-YORK outside NYC) and say "Paid Safe and Sick Leave"