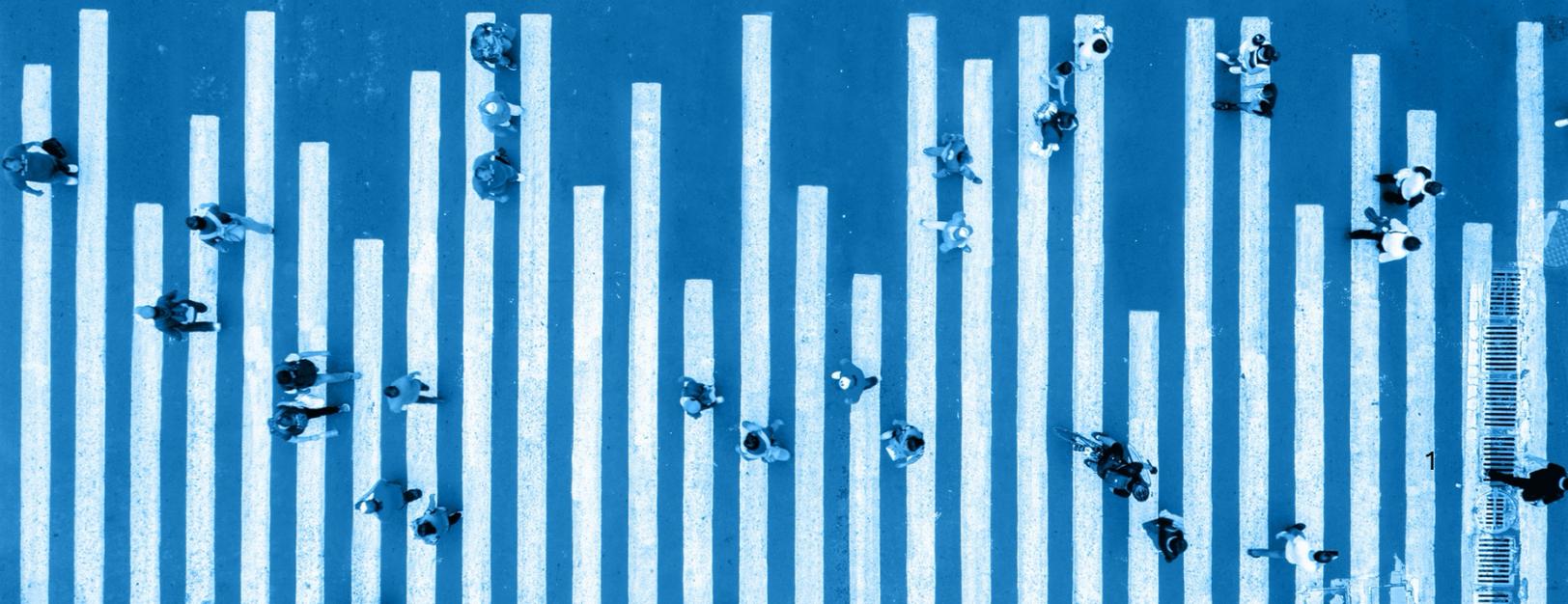


Benchmarks for Evaluating Compliance with **NYC's Protected Time Off Law**



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Summary

The City of New York has some of the nation's strongest sick leave protections. As the agency charged with enforcing NYC's Protected Time Off Law (the Law), the Department of Consumer and Worker Protection (DCWP) is committed to ensuring that workers can fully access them.

To that end, DCWP developed a new data-driven approach that analyzes rates of paid sick leave use in employer records to identify possible violations of the Law. The approach compares employers' paid sick leave use rates to national data on sick time use from the U.S. Centers for Disease Control and Prevention's annual National Health Interview Survey (NHIS).

DCWP finds that if a low percentage of employees use paid sick leave, it is reasonable to conclude that an employer has an official or unofficial policy or practice of not providing or refusing to allow the use of protected time off in violation of section 20-913 of the Law.

The benefits of DCWP's study are twofold.

1. Employers can use this study to self-audit their own employees' use of sick leave to evaluate their compliance with the Law.
2. DCWP will use this study in Protected Time Off investigations and enforcement actions. When DCWP identifies low actual usage rates compared to expected usage rates, along with other evidence that workers had problems accessing protected time off, DCWP will take enforcement action on behalf of all affected employees.

By grounding enforcement in rigorous data analysis, DCWP can more effectively detect barriers to compliance, focus resources where workers are most at risk, and ensure that paid sick leave is a right that exists in practice, and not just on paper.

About the NYC Department of Consumer and Worker Protection (DCWP)

DCWP is the nation's leading municipal enforcement agency charged with delivering economic justice. DCWP leverages its authority to bring New Yorkers real economic relief and protect them from predatory, deceptive, and unfair practices that violate their rights as consumers and workers. This includes pioneering cutting-edge protections, such as the City's Consumer Protection Law, Protected Time Off Law, Fair Workweek Law, and Delivery Worker Laws, including the Minimum Pay Rate for delivery workers. Through licensing more than 45,000 businesses in over 45 industries, DCWP ensures fair competition and a level playing field for responsible small businesses that are integral to New York City's vibrant communities. DCWP also provides essential services such as free tax preparation and financial counseling to ensure New Yorkers keep more of what they earn and can plan for their futures. DCWP is committed to making sure New York City is a fairer, more affordable place to live.

Background

Throughout the country, many state and local governments, including the City of New York, have enacted laws requiring employers to provide employees with sick leave benefits that meet minimum standards.¹ Paid sick leave mandates are also common internationally.² Extensive literature has documented the public health and economic benefits of paid sick leave.³

Protected Time Off in New York City

DCWP enforces NYC's Protected Time Off Law, also called the Earned Safe and Sick Time Act, which took effect April 1, 2014 and has been amended several times since. The most recent amendment took effect on February 22, 2026. The Law gives employees in New York City the right to sick leave along with other protections. Under the Law:

- Employers must give their employees in New York City protected time off work to:
 - Get medical care or to recover from their own illness or injury.
 - Care for a family member who is sick or has a medical appointment.
 - Leave an abuser if they're experiencing domestic violence.
 - Take safety measures if they or a family member experience unwanted sexual contact, stalking, human trafficking, or workplace violence.
 - Care for a family or household member with a disability.
 - Care for a child, including school holidays and child care disruptions.
(beginning February 22, 2026)
 - Attend public benefits or housing appointments or hearings.
(beginning February 22, 2026)
 - Stay home during extreme weather events or other public emergencies.
(beginning February 22, 2026)
- The amount of protected time off an employer must provide depends on employer size.
 - Employers with 100 or more employees must provide up to *56 hours* of *paid* protected time off each year.
 - Employers with 5-99 employees, all employers of domestic workers, and employers with four or fewer employees and business income of \$1 million or more must provide up to *40 hours* of *paid* protected time off.
 - All other employers must provide up to *40 hours* of *unpaid* protected time off.

¹ Pomeranz et al. (2022). State paid sick leave and paid sick-leave preemption laws across 50 U.S. states, 2009-2020. *American Journal of Preventive Medicine* 62(5), 688–695. <https://doi.org/10.1016/j.amepre.2021.11.018>.

² Rho et al. (2020). *Contagion nation 2020: United States still the only wealthy nation without paid sick leave*. Center for Economic and Policy Research. <https://cepr.net/report/contagion-nation-2020-united-states-still-the-only-wealthy-nation-without-paid-sick-leave/>.

³ See, e.g., Asfaw et al. (2017). Potential economic benefits of paid sick leave in reducing absenteeism related to the spread of influenza-like illness. *Journal of Occupational and Environmental Medicine* 59(9), 822–829. <https://doi.org/10.1097/JOM.0000000000001076>; Peipins et al. (2012). The lack of paid sick leave as a barrier to cancer screening and medical care-seeking: Results from the National Health Interview Survey. *BMC Public Health* 12, 520. <https://doi.org/10.1186/1471-2458-12-520>; and Stoddard-Dare et al. (2018). Paid sick leave and psychological distress: An analysis of U.S. workers. *American Journal of Orthopsychiatry* 88(1), 1–9. <https://doi.org/10.1037/ort0000293>.

- All employers must provide an additional *32 hours* of *unpaid* protected time off each year (*beginning February 22, 2026*). This leave is immediately available to employees who don't have enough accrued time off or who used all accrued time off in a calendar year.
- Employers must also provide a separate bank of *20 hours* of *paid* prenatal leave for employees to get health care for themselves during a pregnancy.
- Employers must give employees three pieces of information to ensure they are aware of their rights and can use their protected time off.
 1. Employers must give employees written protected time off policies.
 2. Employers must post and distribute the Notice of Employee Rights that is available at nyc.gov/workers.
 3. Employers must maintain records of each employee's protected time off accrual, balance, use, and pay, and print this information on employee pay statements.
- Employers may require employees to provide advance notice of the need to use protected time off only if the need is foreseeable, such as a scheduled doctor's appointment or a school holiday. Employers may not impose an advance notice requirement for unforeseeable needs, such as illness. Employers must explain any advance notice requirement in their written protected time off policies.
- Employers may not require employees using protected time off to provide documentation justifying the use of the time unless:
 - the employee has used more than three consecutive workdays of leave; and
 - the employer's written protected time off policy explains the documentation requirement.
- Employers may not restrict the use of protected time off to certain dates and may not take adverse action against employees for requesting or using protected time off.

DCWP Enforcement

This section focuses on DCWP enforcement of the Law's sick leave requirements since, historically, sick leave is the most common reason employees need to use protected time off.

DCWP enforces the Law and must investigate all complaints the Agency receives. During an investigation, DCWP interviews workers using phone and email lists obtained from employers and analyzes employer records, including payroll data that shows any payment for sick leave.

In some cases, employees report that their employer does not offer a paid sick leave benefit. DCWP has found that even employers that do offer paid sick leave may be failing to comply with the Law's requirements. For example, employees may also report these barriers to using paid sick leave:

- The employer does not have a written paid sick leave policy.
- The employer usually does not pay employees when they take time off for sick leave reasons.
- The employer does not print sick leave balances or other required information on employee pay statements.
- Employees' supervisors are unaware of the existence of a paid sick leave benefit.

- When employees need to take time off, supervisors deny leave requests or condition approval on the employee finding a replacement worker to cover the shift.
- Supervisors intimidate employees into choosing not to take leave.
- The employer imposes unlawful advance notice and documentation requirements.
- The employer conditions pay for sick leave on the employee submitting a doctor's note.

When payroll data shows that some workers received pay for sick leave but the percentage is so low, investigators can find that employer's records appear to corroborate employees' reports of a lack of meaningful access to paid sick leave. In such cases, DCWP typically charges the employer with a pattern or practice of not providing or refusing to allow the use of protected time off in violation of section 20-913 of the Law. Penalties involve \$500 in relief per employee per year and an equal amount in civil penalty.

When presented with these findings from DCWP investigations, employers may offer various defenses for low use of paid sick leave, such as:

- Employees didn't need to use sick leave.
- Employees voluntarily chose to work through illness.
- Employees preferred to schedule medical appointments on non-work time.

To resolve the conflict between employees' reports and employers' defenses, DCWP undertook this study to substantiate what conclusions DCWP can reasonably draw from employer payroll records that show low rates of paid sick leave use and to identify an objective measure of employee use of sick leave at businesses that offer a paid sick leave benefit.

DCWP Study of Paid Sick Leave Use

The question this study aims to answer is:

What is the point at which low use of paid sick leave becomes substantial evidence of an employer's noncompliance with the Law?

No prior study has directly addressed this question.

This study investigates employees' use of sick leave by analyzing responses to the National Health Interview Survey (NHIS), an annual survey conducted by the U.S. Centers for Disease Control and Prevention (CDC). The NHIS surveys approximately 27,000 adults each year about:

- physical and mental health histories;
- health-related behaviors (doctor visits, smoking, etc.);
- access to health services;
- demographics; and
- job characteristics, including health-related benefits provided by their employer.

The key survey questions for this study concern access to paid sick leave and missed work. Specifically, respondents are asked whether their main job provides paid sick leave and, separately, the number of workdays they missed due to their own illness, injury, or disability in the past year.

To evaluate sick leave use, DCWP estimated the percentage of workers who reported missing at least one workday due to their own illness, injury, or disability in the 12 months preceding the survey. Note:

- DCWP restricted the analysis to responses from private-sector employees in 2023 (11,657 respondents).⁴
- Because the NHIS does not ask employees about all reasons for using leave that are protected under the Law—for example, preventive health care, care for someone else, safety—DCWP's analysis is limited to the leave employees reported using for their own illness, injury, or disability.

See Appendix B.

DCWP's analysis showed:

- Among employees with paid sick leave, half miss at least one workday due to their own illness, injury, or disability each year.
- This percentage varies only modestly across different types of jobs or between demographic groups.

⁴ The Law does not apply to government employees.

DCWP concludes:

- The percentage of employees who use sick leave for their own illness, injury, or disability at employers that comply with the Law should fall within a specific range.
- If an employer's records show that few of its employees use paid sick leave, the most likely explanation is that the employer has not, in fact, provided the benefit in accordance with the minimum standards required by the Law.

Finding 1: Half of employees with access to paid sick leave miss at least one workday due to their own illness, injury, or disability each year.

Among employees with access to paid sick leave, 50% reported missing at least one workday due to their own illness, injury, or disability within the last year.

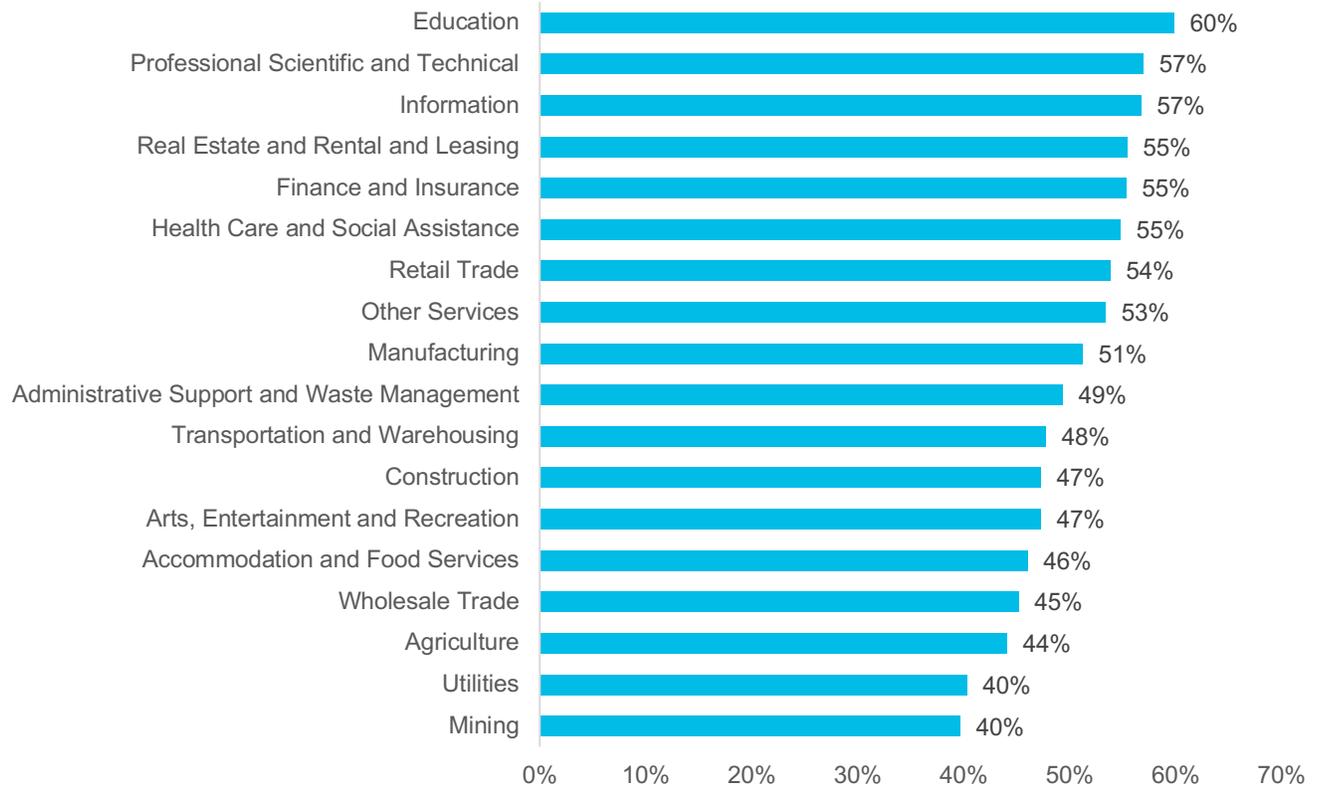
Finding 2: Missed work due to illness, injury, or disability is common, regardless of job characteristics.

Significant percentages of employees with access to paid sick leave miss work due to their own illness, injury, or disability regardless of job characteristics, including industry, occupation, and hours worked.

By industry, employees most likely to miss work due to their own illness, injury, or disability were in education (60%), followed by professional, scientific, and technical services (57%) and information (57%). Employees in mining (40%) were the least likely to miss work.

The industries DCWP commonly investigates for compliance fall within these ranges, including health care, retail, food services, and construction. See Figure 1 on page 9.

Figure 1. Percent of employees with access to paid sick leave who missed work due to their own illness, injury, or disability, by industry

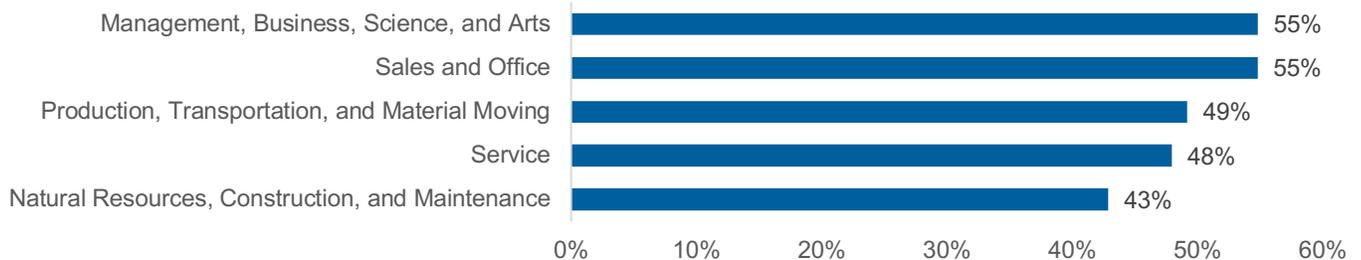


Source: National Health Interview Survey, 2023.

Note: Two industries (Public Administration and Management of Companies and Enterprises) are excluded due to sample size.

By occupation, employees across all five major categories were similarly likely to miss work due to their own illness, injury, or disability, ranging from 43% for natural resources, construction, and maintenance occupations to 55% for management, business, science, and arts occupations.

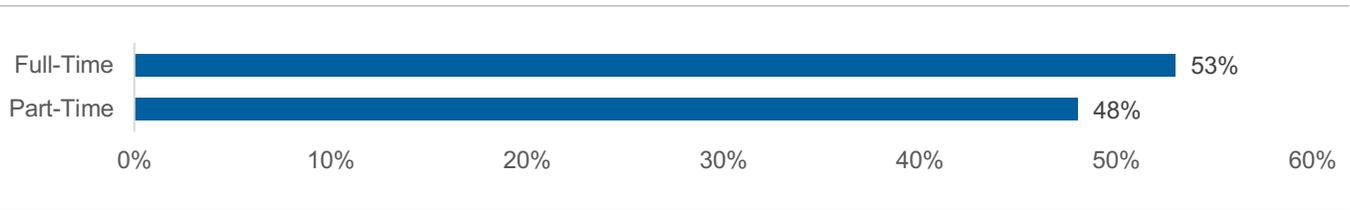
Figure 2. Percent of employees with access to paid sick leave who missed work due to their own illness, injury, or disability, by occupation



Source: National Health Interview Survey, 2023.

By hours worked, 53% of full-time employees and 48% of part-time employees with access to paid sick leave missed work due to their own illness, injury, or disability.

Figure 3. Percent of employees with access to paid sick leave who missed work due to their own illness, injury, or disability, by full-time vs. part-time status

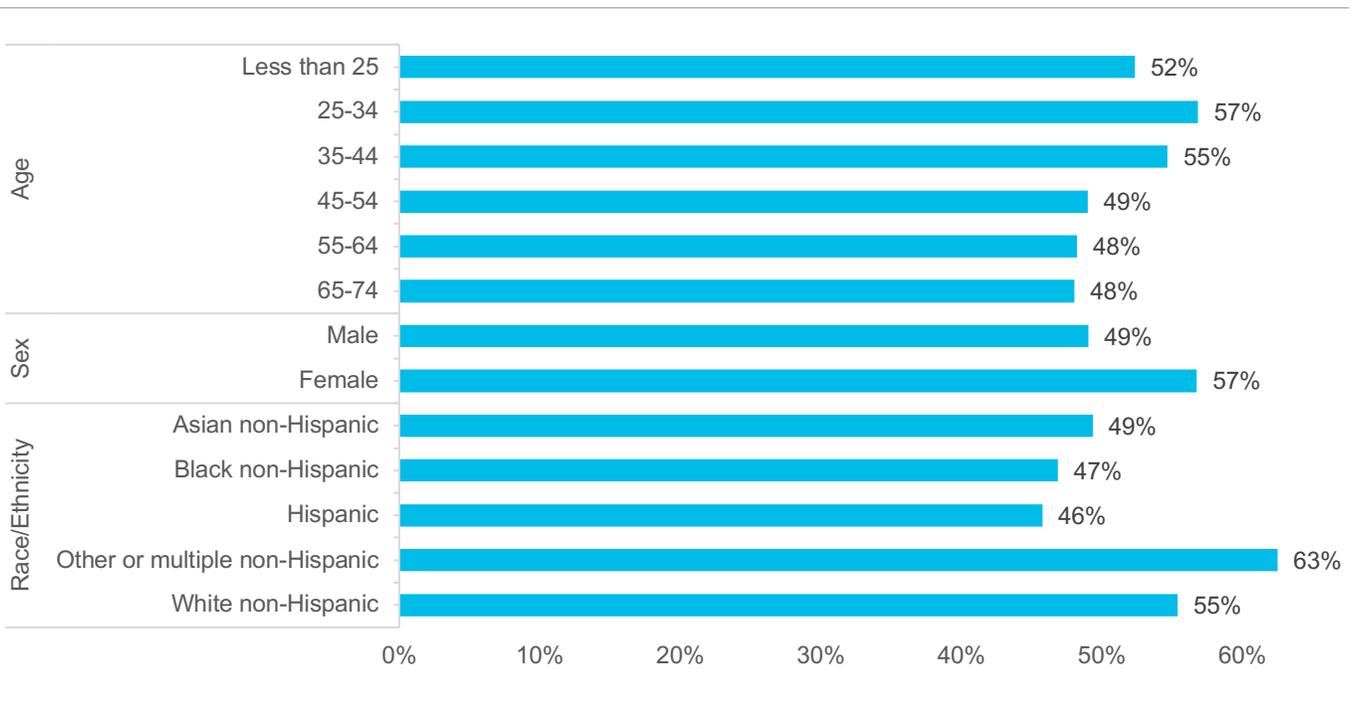


Source: National Health Interview Survey, 2023.
 Note: "Full-Time" defined as 30 or more hours per week.

Finding 3: Missed work due to illness, injury, or disability is common, regardless of demographic characteristics.

In 2023, significant percentages of employees with access to paid sick leave missed work due to their own illness, injury, or disability, regardless of their demographic characteristics, including self-reported age, sex, and race/ethnicity. To the extent that there are differences by demographics, they may be partly driven by differences in the industry and occupational compositions of employment across groups.

Figure 4. Percent of employees with access to paid sick leave who missed work due to their own illness, injury, or disability, by age, sex, and race/ethnicity



Source: National Health Interview Survey, 2023.

These findings rule out the possibility that there is any type of job or demographic group in which employees with access to paid sick leave rarely or never need to miss work due to their own illness, injury, or disability. Rather, it is common for employees with access to paid sick leave to miss work due to their own illness, injury, or disability, regardless of industry, occupation, full-time or part-time status, age, sex, or race/ethnicity.

Implications for Enforcement of the Law

DCWP's finding that the need to use sick leave is nearly universal, with limited variation by demographics or job characteristics, has implications for DCWP's investigations and enforcement. If the percentage of employees who use paid sick leave is significantly below the industry average (as shown in Figure 1 on page 9), the employer is likely violating the Law.

A practical method for performing this comparison is detailed in Appendix C. In brief, the method consists of calculating the percentage of employees who should be expected to use sick leave at an employer (based on industry and the number of weeks each employee worked) and comparing it to the percentage of employees who actually used paid protected time off at the employer during the period under investigation.

It's important to emphasize, however, that the industry averages DCWP uses in this method *underestimate* the true percentage of employees DCWP would expect to use leave at an employer that is compliant with the Law, likely by a large margin. As a result, DCWP's method is only able to identify cases where the employer has severely suppressed its employees' ability to use paid sick leave.

This limitation arises from several features of the NHIS, which is the data source DCWP used to calculate the industry averages.

1. The NHIS only includes questions about employees' use of sick leave for their own illness, injury, or disability, which is a subset of all protected reasons to use leave under the Law. Use of leave across all protected reasons is necessarily higher.
2. The NHIS does not capture *partial* days of work missed for injury, illness, or disability which the Law allows. Use of leave that includes partial days should similarly be higher.
3. Many NHIS respondents who indicated they have access to paid sick leave may be covered by employer policies that do not meet the robust standards required under the Law, or work for employers that do not always adhere to their own policies, depressing missed days of work within the industry averages.
4. The NHIS asks for current access to paid sick leave and, separately, days of work missed due to illness, injury, or disability in the past 12 months; however, a respondent with current access to paid sick leave may not have had continuous access to it for the past 12 months (e.g., due to breaks in employment, changes in employer policies, or job changes), or may not recall all days of work missed. This means that DCWP's calculation of the industry averages, derived from this survey data, underestimates how often DCWP should actually expect an employee to miss work.
5. DCWP's calculation of the industry averages is derived from the national population of respondents to the NHIS; however, statistics on respiratory infections, a main cause of missed work,⁵ suggest that employees in New York City have sick leave needs that exceed the national average.⁶

⁵ Groenewold et al. (2019). Health-Related Workplace Absenteeism Among Full-Time Workers — United States, 2017–18 Influenza Season. *Morbidity and Mortality Weekly Report*. DOI: <http://dx.doi.org/10.15585/mmwr.mm6826a1>.

⁶ See Centers for Disease Control and Prevention (2024). *Outpatient respiratory illness activity map determined by data reported to ILINet*. <https://gis.cdc.gov/grasp/fluview/main.html> (showing that in all but two flu seasons since 2008-09, outpatient respiratory illness visits in New York City were higher than the national average); Covid Act Now (2024). *U.S. covid tracker*. <https://covidactnow.org/?s=50083753> (showing that per-capita COVID cases have been consistently higher in New York City than the national average).

For all of these reasons, the percentage of employees who use protected time off at an employer in New York City should be substantially higher than the industry averages shown in Figure 1.

These factors further support that the benchmark DCWP has developed is very conservative. It follows that if an employer's records show that employees' actual use of protected time off falls below even this benchmark, this would provide very strong evidence that the employer has illegally and severely prevented use of protected time off among its employees.

The universality of employees' need for sick leave shown in this study should be persuasive in countering employer defenses that protected time off is neither wanted nor needed based on the nature of its jobs or the people it employs. Rather, if an employer's records show low use of leave, the overwhelming likelihood is that its employees are attending work while sick, missing or delaying preventive medical evaluations or treatments, failing to provide care to ill family members, or missing work to care for themselves or a family member without receiving any pay for the time off—all of which are contrary to the requirements of the Law.

Going forward, DCWP will integrate these findings into its investigation and enforcement work.

- To evaluate whether an employer offers a compliant protected time off benefit, among other investigative steps, DCWP will calculate employees' paid sick leave usage rates from payroll records for the period under investigation.
- DCWP will then compare these "actual" protected time off usage rates to the percentage of employees expected to use sick leave in that industry.
- If there are low actual usage rates compared to expected usage rates, and DCWP's investigation uncovers other evidence that employees had problems accessing protected time off, DCWP will charge the employer with maintaining an official or unofficial policy or practice of not providing or refusing to allow the use of protected time off in violation of section 20-913 of the Law and take enforcement action on behalf of all affected employees. Other evidence may include, for example, employees' anecdotal reports to DCWP or noncompliant policies.

Under the Law, employers that fail to offer a compliant protected time off benefit must pay each affected employee at least \$500 per year plus an equal amount as civil penalty. For example, an employer with 100 employees owes \$300,000 for protected time off violations over three years, divided between employee relief (\$150,000) and civil penalty (\$150,000). Individual employees may be entitled to additional relief in retaliation cases.

Employers that fail to come into compliance face higher civil penalties of up to \$1,000 per instance of a violation for subsequent violations of the Law, calculated per employee, per year.

Recommendations for Employers

To evaluate compliance with the Law and avoid DCWP enforcement action, employers should analyze their pay records to calculate rates of protected time off use among their employees and compare them to industry benchmarks. DCWP created a tool—*Protected Time Off Usage Compliance Tracker*—that employers can use, available at nyc.gov/dcwp.

Employers with use rates below their industry averages should evaluate their protected time off policies and practices to identify and correct violations that may be contributing to low use rates. Below are common violations, along with recommendations to avoid them.

Violation: Not offering a sick leave or protected time off benefit at all.

Recommendation: Review DCWP's *Frequently Asked Questions* to understand who is covered by the Law, requirements for accrual, use, and pay of protected time off, recordkeeping requirements, and more. FAQ are available at nyc.gov/dcwp.

Violation: Nonexistent or insufficient written paid sick leave or protected time off policies.

Recommendation: Written policies are necessary to explain how employees accrue protected time off, how to use it, and how to comply with requirements around notice, documentation, and other logistics. Review DCWP's *Rules for Protected Time Off Policies* for detailed guidance about what an employer must include in a policy. This handout is available at nyc.gov/dcwp.

Violation: Inadequate or unlawful systems for administering sick leave or protected time off policies.

Recommendation: Employers must have internal systems to ensure that employees with protected time off balances are paid when they take time off. This may include:

- *protocols* for supervisors to report to payroll when an employee calls out for illness, child care, or another protected reason;
- *protocols* for employees to enter protected time off requests in a timekeeping system;
- *protocols* to ensure that required notices and policies are properly posted and distributed;
- *controls* to flag situations when an employee did not work a scheduled shift to identify whether this was for a protected time off reason;
- *procedures* for how employees can request protected time off when they are not at the worksite.

Employers with unwritten or informal internal systems for administering protected time off benefits risk violations, as supervisors or managers may not perform the necessary steps to ensure employees are paid.

Violation: Absence control policies providing for discipline or other negative consequences when employees call out at the last minute or for no call, no show.

Recommendation: An absence control policy is only lawful if it contains an explicit carve-out for protected time off. Employers must allow employees with protected time off balances to call out for protected reasons without discipline or threat of discipline.

Violation: Unlawful restrictions on employees' use of sick leave or protected time off.

Recommendation: Know that the Law prohibits many once-common restrictions on the use of protected time off, including:

- Asking an employee to find a replacement employee as a condition of using protected time off.
- Requiring employees using protected time off to provide documentation justifying the use of leave. This is only permissible if the employee is out for more than three consecutive workdays.
- Requiring advance notice of protected time off. An employer may require an employee to provide advance notice only if the need to use protected time off is foreseeable. Foreseeable means the employee is aware of the need to use protected time off seven days or more before the use.
- Establishing "blackout periods," specific dates when protected time off is forbidden.

Through a self-audit of protected time off pay records and a thorough review of practices for administering protected time off, employers can identify and correct problems that prevent employees from receiving the protected time off benefits the Law requires.

Appendices

Appendix A:

Supplemental Analysis of Access to Paid Sick Leave and Missed Work Due to Illness, Injury, or Disability from the National Health Interview Survey

Table A1. Percent of employees with paid sick leave and percent of employees with and without paid sick leave who missed at least one day of work for their own illness, injury, or disability, by demographic and job characteristic

		All Employees			Employees With Paid Sick Leave		Employees Without Paid Sick Leave	
		Sample	Percent With Paid Sick Leave	Margin of Error (+/-)	Percent Who Missed Work	Margin of Error (+/-)	Percent Who Missed Work	Margin of Error (+/-)
All Workers		11,657	71%	1%	50%	1%	44%	1%
Age	Less than 25	1,038	54%	3%	52%	4%	50%	5%
	25-34	2,640	76%	2%	57%	2%	51%	4%
	35-44	2,634	77%	2%	55%	2%	41%	4%
	45-54	2,169	75%	2%	49%	2%	41%	4%
	55-64	2,079	76%	2%	48%	2%	39%	4%
	65-74	928	57%	3%	48%	4%	29%	4%
	75-84	150	34%	8%	36%	13%	33%	9%
	85 and older	19	59%	22%	36%	30%	17%	24%
Sex	Female	5,665	70%	1%	57%	2%	47%	2%
	Male	5,992	72%	1%	49%	1%	41%	2%
Race/ Ethnicity	Asian non-Hispanic	820	82%	3%	49%	4%	34%	8%
	Black non-Hispanic	1,193	72%	3%	47%	3%	41%	5%
	Hispanic	2,074	64%	2%	46%	3%	36%	4%
	Other or multiple non-Hispanic	296	70%	5%	63%	7%	69%	10%
	White non-Hispanic	7,274	72%	1%	55%	1%	47%	2%
Hours	Full-time	9,622	79%	1%	53%	1%	48%	2%
	Part-time	2,035	40%	2%	48%	3%	38%	3%
Occupation	Management, Business, Science, and Arts	5,082	85%	1%	55%	1%	43%	4%
	Natural Resources, Construction, and Maintenance	585	48%	4%	43%	6%	40%	6%

Occupation (continued)	Production, Transportation, and Material Moving	1,925	67%	2%	49%	3%	43%	4%
	Sales and Office	2,304	70%	2%	55%	2%	46%	4%
	Service	1,622	50%	2%	48%	3%	46%	3%
Industry	Accommodation and Food Services	761	45%	4%	46%	5%	47%	5%
	Administrative Support and Waste Management and Remediation	487	60%	4%	49%	6%	39%	7%
	Agriculture	125	51%	9%	44%	12%	32%	11%
	Arts, Entertainment and Recreation	221	64%	6%	47%	8%	34%	10%
	Construction	804	57%	3%	47%	4%	39%	5%
	Education	434	76%	4%	60%	5%	38%	10%
	Finance and Insurance	788	92%	2%	55%	4%	37%	11%
	Health Care and Social Assistance	1,940	76%	2%	55%	3%	49%	5%
	Information	265	85%	4%	57%	6%	45%	16%
	Management of Companies and Enterprises	15	80%	20%	54%	27%	100%	0%
	Manufacturing	1,367	79%	2%	51%	3%	49%	6%
	Mining	65	72%	11%	40%	14%	77%	21%
	Other Services	501	58%	4%	53%	6%	39%	7%
	Professional Scientific and Technical	1,296	86%	2%	57%	3%	44%	7%
	Public Administration	35	78%	14%	61%	18%	70%	32%
	Real Estate and Rental and Leasing	212	75%	6%	55%	8%	44%	12%
	Retail Trade	1,246	68%	3%	54%	3%	47%	5%
	Transportation and Warehousing	574	67%	4%	48%	5%	38%	7%
	Utilities	111	92%	5%	40%	10%	43%	29%
	Wholesale Trade	273	79%	5%	45%	7%	47%	14%

Source: National Health Interview Survey, 2023.

Notes: "Full-time" is an average workweek of 30 hours or more. "Margin of Error (+/-)" is margin of error for the 95% confidence interval. Occupation and Industry samples exclude a small number of workers who do not fall into any of the shown categories (e.g., military and related occupations, "other" responses).

Appendix B: Measuring Missed Days of Work Due to Illness, Injury, or Disability

Table B1 summarizes the National Health Interview Survey questions and answer choices and the inclusion criteria used in this study.

Table B1. National Health Interview Survey Study Inclusion Criteria

Metric	Questionnaire Text	Possible Responses	Criteria
Employment status	Last week, did you work at a job or business for pay?	<ul style="list-style-type: none"> • Yes • No • Don't know • Refused 	Respondents were asked about sick leave or missed work if they answered "Yes."
Class of worker	Which of these BEST describes your MAIN job or work situation?	<ul style="list-style-type: none"> • Employee of a PRIVATE company for wages • A FEDERAL government employee • A STATE government employee • A LOCAL government employee • Self-employed in OWN business, professional practice or farm • Working WITHOUT PAY in a family-owned business or farm • Refused • Don't know 	Only respondents who reported they were an "Employee of a PRIVATE company for wages" were included in the study.
Access to paid sick leave	Regarding your job or business, is paid sick leave available if you need it?	<ul style="list-style-type: none"> • Yes • No • Don't know • Refused 	Only respondents who answered "Yes" or "No" were included in this study, with "No" responses only used to calculate the % of workers with paid sick leave and for Table A1.
Missed work due to illness, injury, or disability	During the past 12 months, about how many days of work did you miss because you had an illness, injury, or disability? Do not include family or paternity/maternity leave.	<ul style="list-style-type: none"> • Numbers from 0 to 365 • Don't know • Refused 	Only respondents who provided a number are included in this study.

Source: National Health Interview Survey, 2023.

Appendix C: Determining Whether Actual Use of Protected Time Off is Significantly Lower than Expected Use of Protected Time Off During an Investigation

This appendix details the steps to compare use of protected time off at an employer to industry averages to evaluate compliance with the Law. Specifically, if the percentage of employees who used protected time off at an employer (as calculated from the employer’s payroll records) is significantly lower than what should be expected based on the average rate of missed work due to illness, injury, or disability among employees in the industry who have access to paid sick leave (as calculated from the NHIS), then the employer is very likely to be violating the Law.

Step 1: Calculate Expected Use of Protected Time Off at the Employer

The percentage of employees who should be expected to have used protected time off at an employer that is compliant with the Law (“expected use”) can be calculated from the industry averages shown in Figure 1 on page 9.

Use the following substeps to perform the Step 1 calculation.

- i. Convert the annual probability of missing work due to illness, injury, or disability from Figure 1 to a weekly probability. The formula for this conversion is:

$$r_1 = 1 - (1 - r_{52})^{\frac{1}{52}} \quad (1)$$

where r_1 is the weekly probability, and r_{52} is the annual probability.

For example, in the accommodation and food services industry, the annual probability shown in Figure 1 is 46%. Plugging in this value, the weekly probability is 1.178%:

$$r_1 = 1 - (1 - 0.46)^{\frac{1}{52}} = 0.01178 \quad (2)$$

This calculation is based on the “constant hazard model,” which is a long-standing feature of research in many health-related fields. It assumes that an employee’s risk of missing work due to illness, injury, or disability is the same in each week of their tenure.¹

Table C1 shows the weekly probability for each industry that can be obtained using this expression.

¹ Lawless, J. F. (2003). Basic concepts and models. In *Statistical models and methods for lifetime data* (2nd ed., pp. 1–47). John Wiley & Sons.

Table C1. Annual and weekly probability of missing work due to illness, injury, or disability, by industry

Industry	Annual Probability	Weekly Probability
Accommodation and Food Services	46%	1.178%
Administrative Support and Waste Management and Remediation	49%	1.287%
Agriculture	44%	1.109%
Arts, Entertainment and Recreation	47%	1.213%
Construction	47%	1.213%
Education	60%	1.747%
Finance and Insurance	55%	1.524%
Health Care and Social Assistance	55%	1.524%
Information	57%	1.610%
Manufacturing	51%	1.362%
Mining	40%	0.978%
Other Services	53%	1.441%
Professional Scientific and Technical	57%	1.610%
Real Estate and Rental and Leasing	55%	1.524%
Retail Trade	54%	1.482%
Transportation and Warehousing	48%	1.250%
Utilities	40%	0.978%
Wholesale Trade	45%	1.143%

Notes: Annual probabilities are as shown in Figure 1 on page 9. Weekly probabilities are derived using equation (2).

- ii. For each employee, use the *weekly* probability obtained from equation (1) to calculate the *cumulative* probability that the employee will have missed work due to illness, injury, or disability in at least one of the weeks in which they appear in the employer's payroll records. The calculation is as follows:

$$r_w = 1 - (1 - r_1)^w \quad (3)$$

where r_w is the probability that an employee appearing in the employer's records for w weeks will have missed work due to illness, injury, or disability at least once, and r_1 is as in equation (1).

For example, given the 1.178% weekly probability of missing work due to illness, injury, or disability in the accommodation and food service industry, as obtained from equation (2), if an employee appears in the employer's records for 48 weeks, the cumulative probability is 43%. This is calculated as:

$$r_{48} = 1 - (1 - 0.01178)^{48} = 0.4338 \quad (4)$$

- iii. Take the average of the values obtained for each employee from equation (3). The result is the percentage of employees DCWP should observe using protected time off within the employer's payroll records if the employer is compliant with the Law. This calculation is as follows:

$$\hat{r} = \frac{\sum_{i=1}^n r_{w_i}}{n} \quad (5)$$

where \hat{r} is the percentage of employees who would be expected to have used protected time off if the employer is compliant (i.e., the "expected use"), n is the number of employees appearing in the employer's payroll records, and r_{w_i} is the probability that each employee, i , will have used leave during the w weeks they appear in the employer's payroll records.

For example, if an accommodation and food service employer has five employees who worked 10, 58, 26, 52, and 75 weeks, respectively, during the period under investigation, we should expect to observe in the employer's records that 38% of the employees used protected time off during this period (in other words: two out of the five employees).

Plugging in these values to equation (5), we have:

$$\begin{aligned} \hat{r} &= (r_{10} + r_{58} + r_{26} + r_{52} + r_{75})/5 \\ &= (0.1117 + 0.4971 + 0.2652 + 0.4600 + 0.5888)/5 \\ &= 0.3846 \end{aligned} \quad (6)$$

For reasons described in the study text, this is a severe underestimate of the true percentage of employees who should be expected to use protected time off if the employer is compliant with the Law. Still, it provides a practical, if conservative, method for identifying workplaces where use of protected time off has been illegally suppressed.

For brevity, note that equations (1), (3), and (5) can also be condensed into a single expression:

$$\hat{r} = \frac{\sum_{i=1}^n 1 - (1 - r_{52})^{\frac{w_i}{52}}}{n} \quad (7)$$

where all terms are as above.

Step 2: Calculate Actual Use of Protected Time Off at the Employer

The proportion of employees who used protected time off during the period under investigation, r , can be calculated as:

$$r = \frac{n_u}{n} \quad (8)$$

where n_u is the number of employees whose payroll records show any payment for paid protected time off during the period under investigation, and n is the total number of employees appearing in payroll records during the period under investigation.

Step 3: Compare Actual and Expected Use of Protected Time Off at the Employer

In cases where actual use of protected time off from Step 2, denoted r , is less than expected use from Step 1, denoted \hat{r} , a standard statistical analysis can be performed to determine the probability that the difference between actual and expected use is due to random chance alone.²

Use the following substeps to perform the Step 3 calculation.

- i. Calculate the standard error for expected use, defined as:

$$SE = \sqrt{\frac{\hat{r}(1 - \hat{r})}{n}} \quad (9)$$

where n is the number of employees who appear in the employer's payroll records.

- ii. Calculate the Z-statistic, defined as:

$$Z = \frac{r - \hat{r}}{SE} \quad (10)$$

- iii. Look up the "p-value" obtained for Z within a standard normal distribution (e.g., by using the NORM.S.DIST function in Excel). In this application, the p-value is the probability that the difference between actual and expected use of protected time off is a result of random chance alone.

For example, if an employer has 250 employees within the scope of an investigation, with expected use (\hat{r}) calculated at 52%, and actual use (r) calculated at 40%, the standard error for expected use (SE) is 0.03160, the Z-statistic is 3.79777, and the probability that actual use would be this far below expected use due to random chance alone is 0.007%.

By convention, a probability less than 5% is considered statistically significant and a probability less than 1% is considered highly statistically significant. In this example, the result is highly statistically significant. This means that there is virtually no chance that the low use of protected time off at the employer is due to random chance alone.

² Casella, G., & Berger, R. L. (2002). Hypothesis testing. In *Statistical Inference* (2nd ed., pp. 373–413). Duxbury.

