

Paid Safe and Sick Leave Law: Frequently Asked Questions

The Department of Consumer and Worker Protection (DCWP) enforces NYC’s Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law) referred to as the Law in FAQs. These FAQs provide general information and guidance for employees and employers. They are not intended to serve as individualized legal advice. For specific questions, you should contact your legal advisor.

To contact DCWP:

- Visit nyc.gov/workers
- Call 311 (212-NEW-YORK outside NYC) and say “Paid Safe and Sick Leave”

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I. GENERAL QUESTIONS

1. What is safe and sick leave?

Sick leave is time off work for health reasons. Covered employees can use sick leave for the care and treatment of themselves or a family member.

Safe leave is time off work for safety reasons. Covered employees can use safe leave to seek assistance or to take other safety measures if the employee or a family member is the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

These FAQs use the term “safe and sick leave” to refer to time off work for sick leave or safe leave reasons, regardless of whether the leave is paid or unpaid.

Employers must allow employees to use leave for both safe leave and sick leave reasons.

2. Who is considered a family member under the Law?

The Law has a broad definition of *family member* that includes the following:

- Child
(*biological, adopted, or foster child; legal ward; child of an employee standing in loco parentis*)
- Spouse
- Registered domestic partner
- Parent
(*biological, foster, stepparent, or adoptive parent; the employee’s legal guardian; or a person who took on the responsibilities of being a parent when the employee was a minor*)
- Child or parent of an employee’s spouse or domestic partner
- Grandchild or grandparent
- Sibling (half, adopted, or stepsibling)
- Any other individual related by blood to the employee
- Any other individual whose close association with the employee is the equivalent of a family relationship

3. Which employers must provide safe and sick leave?

Private, nonprofit, and household employers that employ workers in New York City must provide safe and sick leave.

Employers with 4 or fewer employees:

- Must provide up to **40** hours of *unpaid* safe and sick leave if the employer’s net income is less than \$1 million in the previous tax year.
- Must provide up to **40** hours of *paid* safe and sick leave if the employer’s net income is \$1 million or more in the previous tax year.
- Must provide up to **40** hours of *paid* safe and sick leave to a **domestic worker**, regardless of the employer’s income.

Employers with 5 or more employees regardless of net income:

- Must provide up to **40** hours of *paid* safe and sick leave if the employer employs 99 or fewer employees.
- Must provide up to **56** hours of *paid* safe and sick leave if the employer employs 100 or more employees.

4. What is “net income” under the Law?

An employer’s *net income* means “entire net income” as defined in Section 208 of the New York State Tax Law. Visit nysenate.gov.

5. How is employer size determined?

Employer size is determined by counting the highest total number of employees employed at the same time at any point during the Calendar Year to date, including:

- temporary and seasonal employees;
- part-time employees;
- employees jointly employed by more than one employer; and
- employees on paid or unpaid leave.

Employers must count all employees nationwide when determining employer size.

6. What does “Calendar Year” mean?

Under the Law, *Calendar Year* generally means any consecutive 12-month period of time as determined by an employer. Most employers will find it helpful to use the same Calendar Year that they use for calculating wages and benefits, such as tax year, fiscal year, contract year, or the year running from January 1 to December 31.

Note: Employers must include their Calendar Year in the written Notice of Employee Rights and written safe and sick leave policy they give to employees.

7. How many hours of paid safe and sick leave must an employer provide when employer size increases or decreases?

If employer size increases from fewer than 5 to between 5 and 99 employees, the employer’s duty to provide *paid* safe and sick leave begins on the date of the increase. Similarly, if employer size increases from 99 or fewer to 100 or more employees, an employee’s right to use additional paid safe and sick leave—up to 56 hours versus up to 40 hours—starts on the date of the increase.

Any decrease in the total number of employees does *not* reduce the number of safe and sick leave hours employees are entitled to until the following Calendar Year.

<i>Examples:</i>	
Employer Size Increase	Employer Size Decrease
An employer with a Calendar Year of January 1 to December 31 has 4 employees. On April 1, 2021, the employer hires 3 new employees, bringing the employer's total number of employees to 7. The employer must begin providing paid safe and sick leave to all employees on April 1, 2021.	On November 1, 2021, the same employer lays off 4 employees, reducing the employer's total number of employees to 3. The employer must continue providing paid safe and sick leave to the 3 remaining employees through at least December 31, 2021, the last day of the current Calendar Year.

8. If the employer is part of a chain business with multiple locations, which employees count toward employer size?

Employers must count all employees across the multiple locations of a chain business.

Under the Law, a chain business:

- has multiple locations that collectively employ at least 5 employees; and
- an owner or principal of the multiple locations owns at least 30% of each location; and
- each location is either engaged in the same business or operates under a franchise agreement.

9. Do employees who do not live or work in New York City count toward employer size?

Yes. For counting the number of employees nationwide, it does not matter whether employees live or work in New York City. However, only employees who work in New York City have rights to safe and sick leave under the Law.

10. Does an employer based outside of New York City have to provide safe and sick leave to employees who work in New York City?

Yes. Employers located outside New York City must provide safe and sick leave to employees who work in New York City.

Scenarios:

Sara owns a trucking company based in Buffalo. Her drivers make regular deliveries and pickups in New York City. Are Sara's drivers working in New York City for purposes of the Law?

Yes. Making deliveries or pickups in New York City is performing work in New York City.

Scenarios (continued):

Boss Trucking Company is based in Cleveland. Its drivers drive through New York City without stopping to make deliveries or pickups. Are Boss's drivers working in New York City for purposes of the Law?

No. Drivers who pass through New York City without stopping to make pickups, deliveries, or otherwise work in New York City are not considered to be working in New York City for purposes of the Law, which does not apply to employees who do not work in New York City.

11. How should joint employers count the employees they jointly employ?

Joint employers must count each employee jointly employed, whether or not employees' names appear on the employer's payroll, in determining employer size.

<i>Examples:</i>	
An employer who jointly employs 3 workers and also has 3 employees under its sole control has 6 employees for the purposes of the Law and must provide paid safe and sick leave to each employee.	An employer employs 4 workers through a temporary help firm as well as 3 permanent workers who are employed directly and under the employer's sole control. The employer has 7 employees for purposes of the Law and must provide paid safe and sick leave.

12. If an employee has two or more joint employers, does the employee accrue separate leave balances with each employer for the same work?

No. If an employee is employed by two or more joint employers, all of the employee's work for each of the joint employers will be considered as a single employment for purposes of accrual and use of safe and sick leave under the Law.

Scenario:

Maria is a garment worker employed by a contractor (ABC Corp.) that contracts with a manufacturer (XYZ Corp.) to assemble garments. ABC Corp. and XYZ Corp. are joint employers of Maria. How does Maria accrue safe and sick leave?

All of the hours Maria works assembling garments for both ABC Corp. and XYZ Corp. are counted toward a single accrual balance and, together, her joint employers must provide safe and sick leave, which she accrues at a rate of 1 hour for every 30 hours she works.

Maria *does not* maintain two different balances of accrued safe and sick leave, one each with ABC Corp. and XYZ Corp.

13. Are fiscal intermediaries considered employers of personal assistants in the Consumer Directed Personal Assistance Program (CDPAP)?

Yes. Fiscal intermediaries are employers of CDPAP personal assistants under NYC's Paid Safe Sick Leave Law. Fiscal intermediaries may qualify as employers by, among other things:

- setting wage rates;
- maintaining payroll records; and
- setting conditions of work by maintaining policies related to leave and benefits.

Fiscal intermediaries must comply with the Law for all covered CDPAP personal assistants. CDPAP personal assistants who work in New York City are covered by the Law regardless of where the fiscal intermediary is located and regardless of whether the fiscal intermediary classifies the personal assistant as an employee or not.

II. EMPLOYEES COVERED BY THE LAW

1. Which employees are covered by the Law?

Most employees who work in New York City are covered by the Law, including:

- Full-time employees
- Part-time employees
- Domestic workers
- Temporary and seasonal employees
- Per diem and on-call employees
- Transitional jobs program employees
- Undocumented employees
- Employees who are family members but not owners
- Employees who live outside of New York City but work in New York City
- Owners who are considered employees under New York State Labor Law

2. Which employees are not covered by the Law?

The Law does not apply to:

- Government employees (federal, State of New York, City of New York)
- Participants in federal work-study programs under 42 U.S.C. § 2753
- Employees whose work is compensated by qualified scholarship programs as defined in 26 U.S.C. § 117
- Hourly professional employees who:
 - i. are licensed by the New York State Education Department under New York State Education Law Sections 6732 (physical therapists), 7902 (occupational therapists), or 8202 (speech-language pathologists);
 - ii. call in for work assignments with the ability to reject or accept any assignment referred to them; *and*
 - iii. are paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the Calendar Year.
- [Independent contractors](#) who do not meet the definition of an employee under Section 190(2) of New York State Labor Law
- Certain unionized employees
- Participants in Work Experience Programs (WEP) under Section 336-c of the New York State Social Services Law
- Owners who do not meet the definition of an employee under New York State Labor Law

3. Does the Law cover domestic workers?

Yes. Domestic workers accrue paid safe and sick leave at the rate of 1 hour for every 30 hours worked, up to a maximum of:

- 40 hours per Calendar Year if their employer employs 1-99 employees; *or*
- 56 hours per Calendar Year if their employer employs 100 or more employees.

Domestic workers are workers who provide:

- care for a child;
- companionship for a person who is ill, in recovery, or an older adult;
- housekeeping; or
- any other domestic service in a home or residence, whether employed by an agency or a household.

Domestic workers include nannies, housekeepers and house cleaners, and home health aides. They may be solely employed or jointly employed, e.g., by a household employer and an agency employer.

Employers who provide domestic workers paid days of rest under Section 161(1) of New York State Labor Law may count these paid days of rest toward fulfillment of the requirements of NYC's Paid Safe and Sick Leave Law only if the days of rest are made available for the same purposes and on the same terms as safe and sick leave under NYC's Paid Safe and Sick Leave Law. If the days of rest are subject to restrictions that are not allowed under NYC's Paid Safe and Sick Leave Law, then the days of rest are additional days for worker use apart from what NYC's Paid Safe and Sick Leave Law provides.

4. Does the Law apply to noncitizen workers or undocumented workers?

Yes. All covered workers have the same rights and protections under the Law, regardless of immigration status.

In addition, DCWP will answer questions and process safe and sick leave complaints without regard to immigration status. DCWP will not ask about workers' immigration status during the course of any DCWP investigation.

Visit nyc.gov/workers for information for Immigrant Workers.

5. Does the Law apply to employees whose main work location is outside New York City but who work in New York City on a regular basis?

Yes.

An employee with a primary work location outside New York City is covered by the Law if the employee regularly performs, or is expected to regularly perform, work in New York City during a Calendar Year. However, only hours worked in New York City must count toward the accrual of safe and sick leave under the Law. An employer must allow employees to use their accrued time for safe and sick leave reasons when they are scheduled to work in New York City. See Rule § 7-203 for examples.

6. Does the Law apply to employees who telecommute or work remotely from New York City?

Yes. Employees who perform work, including by telecommuting, while physically located in New York City are covered by the Law even if the employer is physically located outside New York City.

An employee who only performs work, including by telecommuting, while physically located outside New York City is *not* covered by the Law.

7. Does the Law apply to employees who work in both New York City and other locations in New York State?

As of September 30, 2020, hours worked in New York City also count toward an employee's accrual of leave under New York State's Paid Sick Leave Law (Section 196-b of the New York Labor Law).

An employee with a primary work location in New York State but outside New York City is covered by NYC's Paid Safe and Sick Leave Law if the employee regularly performs, or is expected to regularly perform, work in New York City during a Calendar Year. See Rule § 7-203 for examples.

8. Does the Law apply to supervisors, managers, and salaried employees?

Yes.

9. Does the Law apply to independent contractors?

No. The Law applies to employees only.

Whether a worker is an employee or independent contractor depends on several factors. These include how much supervision, direction, and control the employer has over the services being provided. Visit the New York State Department of Labor website dol.ny.gov/independent-contractors to learn more.

Note: Workers may meet the legal standard for classification as employees even if they are considered independent contractors by their employers.

For example, just because an employer issues a 1099 tax form to a worker, has the worker sign a contract stating that the worker is an independent contractor, or rents a workspace to the worker, such as a chair in a salon, does not necessarily mean the worker is actually an independent contractor.

10. If an employer misclassified a worker as an independent contractor instead of as an employee and, therefore, did not provide safe and sick leave as required by the Law, can the worker file a complaint with DCWP?

Yes. Workers who believe they have been misclassified as independent contractors may file a complaint with DCWP. As part of its investigation, DCWP will make a determination as to whether a worker is covered by the Law.

11. Does the Law apply to employees covered by collective bargaining agreements?

It depends.

For employees covered by a valid collective bargaining agreement that was entered into, extended, or renewed after April 1, 2014, the Law applies unless:

- i. the collective bargaining agreement expressly waives the Law's provisions; AND
- ii. the agreement provides a comparable benefit to employees of paid time off.

Exception: For employees in the construction or grocery industries covered by a collective bargaining agreement, the Law does not apply if the collective bargaining agreement expressly waives the Law's provisions.

Note: As of September 30, 2020, all private sector employees in New York State are covered under New York State's Paid Sick Leave Law. Visit [ny.gov](https://www.ny.gov) to learn how the State law applies to unionized employees.

III. RIGHT TO SAFE AND SICK LEAVE

1. For what purposes can an employee use sick leave?

Employees can use sick leave to take time off from work when:

- They have a mental or physical illness, injury, or health condition; need to get a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or need to get preventive medical care.
- They have to care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventive medical care.
- Their employer's business closes due to a public health emergency or they need to care for a child whose school or child care provider closed due to a public health emergency.

2. Can an employee use sick leave for doctor, dentist, or eye doctor appointments?

Yes. Employees may use sick leave for appointments for preventive medical care and for medical treatment or diagnosis of a health condition. This includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems.

3. Can an employee use sick leave for weather-related events?

It depends.

Employees can't use sick leave because rain or snow impacts their ability to travel to work.

However, employees can use sick leave when weather-related conditions impact the health of the employees or their family members. For example, if employees become ill due to extreme heat or poor air quality, they can use sick leave to care for themselves. Employees also may use sick leave to care for themselves or a family member if exposure to certain weather would pose a risk to the employee or family member due to an underlying medical condition.

4. For what purposes can an employee use safe leave?

Employees can use safe leave if they or a family member were the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking, and they need to:

- obtain services from a domestic violence shelter, rape crisis center, or other services program;
- participate in safety planning, relocate, or take other actions to protect the employee's safety or that of the employee's family members, including enrolling children in a new school;
- meet with an attorney or social service provider to obtain information and advice related to a criminal or civil case, including custody, visitation, child support, divorce, orders of protection, immigration, housing, or discrimination;
- file a domestic incident report with law enforcement or meet with a district attorney's office;
- attend civil or criminal court dates related to any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking; or
- take other actions necessary for the health or safety of themselves or family members, or to protect those who associate or work with the employee.

If you or someone you know is experiencing domestic or gender-based violence, visit nyc.gov/nycchope for resources near you.

5. Can an employee use safe leave even if the employee has not reported a crime to the police and/or if the crime has not been proven?

Yes. The Law does not require an employee to prove that a crime has occurred or been reported in order to use safe leave. Employees may use safe leave if they or a family member were the victim of acts or threats of acts that may constitute the specified crimes under New York State Penal Law.

6. What are some examples of safe leave?

Scenarios:

Someone from Ruby's neighborhood has been following her. Recently, someone broke into her apartment while she and her 10-year-old son were out. No one was physically harmed, but Ruby suspects that it was the person who has been following her and she doesn't feel safe staying in her neighborhood anymore. She has decided to move in with her mom in another school district. Ruby needs to take a day off from work to enroll her son in his new school and to move their belongings to storage and her mom's apartment. May Ruby use safe leave?

Yes. Ruby is taking time off from work to move and to enroll her son in a new school because the acts against her are some of the acts that can constitute the crime of stalking. Stalking and threats or acts that may constitute stalking are covered by the Law; covered employees may use safe leave to relocate and to enroll children in a new school. Ruby's employer must provide safe leave.

Warren was mugged one early Sunday morning, a workday, after dropping off his partner at the airport. He needs to take a couple of hours off to go to the police station to identify suspects. Is the time Warren needs to take off safe leave?

No. Although Warren was the victim of a violent crime, it was not an act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. His employer is not required to provide him with leave under the Law. The Law, however, does not prohibit his employer from giving him time off to handle the police matter.

Francisco needs to take a half-day to go to court to obtain a restraining order against his son-in-law who used to live with him and assaulted Francisco. Is the time Francisco needs to take off from work safe leave?

Yes. Francisco is attending a court proceeding to protect himself and his family after a domestic violence matter. His employer must provide safe leave.

Donna, a paralegal, has been receiving counseling from her pastor after an incident of physical violence involving her ex-boyfriend. She needs to take the afternoon off work to attend a counseling session. May Donna use safe leave for this time?

Yes. Donna was the victim of domestic violence and is meeting with her pastor in order to improve her psychological health. This would be considered a permissible use of safe leave.

7. Does safe leave provide more time off for employees, over and above sick leave?

No. The Law does not require employers to provide separate banks of safe and sick leave to employees. Instead, employers must allow employees to accrue up to 40 or 56 hours per Calendar Year that employees can use for either safe or sick leave purposes.

IV. NOTICE OF RIGHTS AND PAY STATEMENTS

1. Are employers required to give employees notice of their right to safe and sick leave?

Yes. Employers must:

- give each employee a written Notice of Employee Rights;
- post the Notice in the workplace in an area that is visible and accessible to employees.

Employers must give a written Notice of Employee Rights to employees when they begin employment and when their rights change. Employees have a right to be given a Notice in English and, if available on the DCWP website, their primary language.

Employers must post the Notice in English and in any language spoken as a primary language by at least 5% of employees at the workplace if translations are available on the DCWP website.

An employer can't post the Notice at the workplace in lieu of individually giving the Notice to all covered employees.

The Notice of Employee Rights must include information about:

- Accrual and use of safe and sick leave
- Employer's Calendar Year
- Right to be free from retaliation
- Right to file a complaint

The Notice of Employee Rights is available at nyc.gov/workers.

DCWP encourages employees to keep copies of all Notices provided to them.

2. Should an employer save a signed copy of the Notice of Employee Rights or an email receipt for the Notice?

Yes. The Law requires employers to keep or maintain records establishing the date the Notice was provided to an employee and proof that the Notice was received by the employee. Saving signed copies of the Notice or email receipts is a good way to document that employers gave employees the required Notice.

3. Must an employer with safe and sick leave policies that meet or exceed the requirements of the Law give the required Notice of Employee Rights to employees?

Yes. An employer must give employees the Notice of Employee Rights so that employees are aware of their rights under the Law.

4. Do employers have to give employees information on their pay stubs about how much safe and sick leave they have?

Yes. Employers must tell employees how much safe and sick leave they have accrued, used, and available for use. This information must appear on pay stubs or other documentation provided to employees each pay period ("the pay statement").

Specifically, the pay statement must note:

- the amount of safe and sick leave accrued during the pay period;
- the amount of safe and sick leave used during the pay period; and
- the total amount of safe and sick leave available for use in the Calendar Year.

An employer must note on the pay statement the total balance of an employee's accrued safe and sick leave that is available for use in the current Calendar Year. In addition, an employer may, but it is not required to, note on the pay statement an employee's total balance of accrued safe and sick leave that exceeds the number of hours available for use.

Scenario:

John started working for his employer in January 2023. In 2023, John earned 56 hours of safe and sick leave and used only 6 hours of safe and sick leave. The employer has a Calendar Year of January 1 to December 31 and allows employees to use up to 56 hours of leave per Calendar Year. John carried over 50 hours of leave to the following Calendar Year, beginning January 1, 2024. By the end of February 2024, John had earned 10 more hours of safe and sick leave. What information must John's employer include in his pay statement?

John's pay statement must reflect that he has 56 hours of safe and sick leave available for use and may also reflect that he has a total balance of 60 hours of safe and sick leave accrued (50 + 10). The pay statement also must note the amount of safe and sick leave that was accrued and used during the pay period.

5. What if an employer uses an electronic system instead of pay stubs to inform employees about how much sick leave they have?

If an employer does not issue pay stubs and instead uses an electronic system to inform employees how much safe and sick leave they have accrued, used, and available, the employer may comply with the Law by:

- electronically alerting employees each pay period to the availability of the required information;
- making easily accessible in the electronic system for every pay period:
 - the amount of safe and sick leave accrued during the pay period;
 - the amount of safe and sick leave used during the pay period;
 - the total balance of accrued safe and sick leave; and
 - the amount of accrued safe and sick leave available for use; AND
- making the accrual, use, and balance information for any past pay period easily accessible to the employee outside of the workplace.

6. Do employers who offer unlimited safe and sick leave or unlimited paid time off have to comply with the pay statement requirement?

Generally, yes. In very limited circumstances, an employer that offers unlimited paid time off or unlimited safe and sick leave does not have to provide employees documentation showing accrual, use, and balance information each pay period. The applicability of this exception depends on the nature of the employer's written safe and sick leave policy, including whether any restrictions apply, and whether in practice leave is truly unlimited. Employers must still keep records showing compliance with the Law. See VIII. Employer Records.

V. ACCRUAL AND USE OF SAFE AND SICK LEAVE

1. Can employees use safe and sick leave for the care of adult children?

Yes. The Law allows covered employees to use sick leave to care for a child, regardless of age.

2. Can parents use safe and sick leave following the birth of their child?

After giving birth, an employee can use accrued sick leave for any mental or physical illness, injury, or health condition, including any condition resulting from childbirth or postpartum depression, and for preventive medical care.

Employees can also use accrued sick leave to care for a family member who gave birth or for the baby's health needs.

Other leave also may be available:

- Visit dol.gov to learn about the Family and Medical Leave Act (FMLA).
- Visit paidfamilyleave.ny.gov to learn about New York State's Paid Family Leave Law.
- Visit wcb.ny.gov to learn about New York State's Disability Benefits Law.
- Visit dol.ny.gov to learn about paid break time to express breast milk in the workplace.
- Visit nyc.gov/humanrights to learn about reasonable accommodations, such as time off to recover from childbirth or related medical conditions.

3. Is a funeral a covered reason for using safe and sick leave?

The answer depends on the reason an employee needs time off.

An employee may use sick leave to care for a family member who is dying.

After a loss, people may experience anxiety or depression, which are mental health conditions under the Law. Employees may use sick leave due to their own anxiety or depression. An employee also may use sick leave to attend a funeral to care for a family member who needs care for a mental or physical health condition.

4. When do employees begin to accrue safe and sick leave?

Employees began to accrue leave on April 1, 2014 or on their first day of employment, whichever is later.

5. How is safe and sick leave accrual calculated?

Employees accrue safe and sick leave at the rate of 1 hour for every 30 hours worked.

Employers must account for all time worked, regardless of whether time worked is less than a 30-hour increment. When calculating accruals for time worked in increments of less than 30 hours, employers may round accrued leave to the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour, provided that the rounding will not result, over a period of time, in a failure to provide the proper accruals based on all time worked.

Note: For purposes of safe and sick leave accrual, employees who are exempt from overtime requirements under New York State law are assumed to work 40 hours in each workweek, unless their regular workweek is less than 40 hours, in which case leave accrues based on that regular workweek.

6. When can per diem employees use safe and sick leave?

Per diem employees who are covered by the Law can use safe and sick leave for:

- hours they were scheduled to work; or
- hours they would have worked if they hadn't used leave.

An employer must base the leave used on the hours worked by the replacement employee for the same shift. If this method is not possible, the leave used must be based on the hours worked by the employee when the employee most recently worked the same shift.

See the Rules for Safe and Sick Leave, Section 7-214(d).

Scenarios:

Maisie works for Paulie's Pub. Maisie is no longer available to work a regular schedule but is a dependable last-minute substitute worker for evening shifts, which run from 5 p.m. to 8 p.m. on weekdays and 7 p.m. to 9 p.m. on weekends. Recently, Maisie has been called in to work between three to five days per week. If Maisie is needed to cover an evening shift, Paulie, her employer, will usually call her about 2 p.m. in advance of the shift. On Tuesday at 12 p.m., Maisie called Paulie to let him know he shouldn't call her to work because she has to accompany her son to the emergency room. Paulie finds a replacement worker, who works 5 p.m. to 8 p.m. Is Paulie's Pub required to allow Maisie to use safe and sick leave? How much?

Yes. Maisie's employer must allow her to use 3 hours of sick leave.

Viktor works as a pottery teacher for Clay Creations, a pottery studio. Pottery classes vary week to week, depending on how many students sign up. Viktor has accrued 20 hours of safe and sick leave over the course of his employment. In the past few weeks, Viktor has been asked to teach pottery classes one or two times per week, for 2 hours each class. In the most recent workweek he was called in for one 2-hour class. Today, Viktor called his boss to say he will be unable to work for the next two weeks and needs to use his accrued leave because he needs to care for his partner who is recovering from emergency surgery. Clay Creations is unable to find a replacement to teach and cancels class for two weeks. Is Clay Creations required to allow Viktor to use leave? How much?

Yes. Viktor's employer must allow him to use 2 hours of sick leave each week he is unable to work while caring for his partner for a total of 4 hours since Viktor most recently worked 2 hours in a week.

7. How do employees who are paid on a piecework or flat-rate basis accrue safe and sick leave?

When employees are paid on a flat-rate basis, accrual of safe and sick leave is measured by the actual length of time spent performing work.

Scenario:

Rachel is a tailor who works for a dry cleaning business. The dry cleaning business pays Rachel based on the number of garments that she alters, not by the hour. However, Rachel accrues safe and sick leave based on the length of time she spends performing her work, not by the number of garments. If Rachel takes 10 hours to tailor three garments, do those 10 hours count toward her safe and sick leave accrual under the Law?

Yes.

8. How do employees who are paid on a commission basis accrue safe and sick leave?

When employees are paid on a commission basis, accrual of safe and sick leave is measured by the actual length of time spent performing work.

9. How must an employer measure the use of safe and sick leave for employees with indeterminate shift lengths?

When employees do not have fixed shift lengths—for example, their shift length is not scheduled and instead is based on business needs—the employer must base the hours that are used (and must be paid for paid safe and sick leave) on the hours worked by the replacement employee for the same shift. If this method is not possible, the employer must base the hours that are used (and must be paid) on the hours worked by the employee when the employee most recently worked the same shift.

10. Does an employee accrue safe and sick leave during a probationary period?

Yes. Covered employees begin to accrue safe and sick leave when they begin employment.

11. When can an employee start to use safe and sick leave?

Employees can use safe and sick leave as soon as it is accrued. Probation periods, waiting periods, blackout days, or other measures that prevent employees from using safe and sick leave as it is accrued are not allowed under the Law.

12. What happens to safe and sick leave that an employee has accrued but hasn't used at the end of the Calendar Year?

Employees can carry over to the next Calendar Year up to 40 or 56 hours of unused safe and sick leave. However, employers are only required to allow employees to *use* up to 40 or 56 hours of safe and sick leave per Calendar Year.

13. If an employee carries over 40 or 56 hours of unused safe and sick leave to a new Calendar Year, is an employer required to allow the employee to use 80 or 112 hours of safe and sick leave in the next Calendar Year?

No. Employers are only required to allow employees to use up to 40 or 56 hours of leave per Calendar Year. If an employee accrues the maximum amount of 40 or 56 hours and uses fewer hours than the amount accrued during the course of a Calendar Year, then the employee can carry over to the next Calendar Year the remaining hours, up to a maximum of 40 or 56 hours, which will be available for immediate use.

Scenario:

Sarah works for an employer with 50 employees who has a policy of allowing employees to use up to 40 hours of safe and sick leave per Calendar Year. Sarah accrues 40 hours of safe and sick leave in Calendar Year 1 and uses 20 hours of safe and sick leave in Calendar Year 1. She carries over to the next Calendar Year 20 hours, accrues 40 hours, and does not use any hours in Calendar Year 2. Her safe and sick leave balance at the end of Calendar Year 2 is 60 hours (20 hours from Calendar Year 1 plus 40 hours from Calendar Year 2). She may carry over to Calendar Year 3 only 40 of her 60 hours, and she accrues another 40 hours in Calendar Year 3. How much safe and sick leave must Sarah's employer allow her to use in Calendar Year 3?

Sarah's employer is only required to allow her to use 40 hours of her accrued 80 hours in Calendar Year 3.

14. Can an employer pay the employee for unused safe and sick leave instead of allowing the employee to carry it over?

Yes. An employer can choose—but is not required—to pay an employee for unused safe and sick leave at the end of the Calendar Year. An employer is not required to allow employees to carry over safe and sick leave if:

- the employer pays employees for any unused leave at the end of the Calendar Year in which the leave is accrued or front-loaded; AND
- the employer front-loads 40 or 56 hours (as applicable).

15. Can an employee agree with an employer to be paid for safe and sick leave as it is accrued instead of only at the end of the Calendar Year?

No. The purpose of the Law is to ensure that employees can use safe and sick leave for permissible purposes. Paying employees for unused safe and sick leave before the end of the Calendar Year could leave employees with no safe and sick leave on days when employees need to use safe and sick leave and would undercut the purpose of the Law.

16. Can an employer set a midyear deadline when employees must use or lose carried over leave?

No. Employees must be allowed to use carried over leave during the entire Calendar Year.

17. Can an employer have a policy that front-loads 40 or 56 hours of safe and sick leave to the beginning of each Calendar Year to avoid calculating accruals?

Yes. An employer can have a policy that provides all employees with 40 or 56 hours of safe and sick leave at the beginning of each Calendar Year. This option may be attractive to employers who prefer not to track the accrual of safe and sick leave for each covered employee.

An employer with a front-loading policy that provides employees with 40 or 56 hours of safe and sick leave (as applicable) at the beginning of each Calendar Year is not required to note accruals on employees' pay statements. However, if the employer front-loads only a prorated number of hours or other amount of leave that is less than 40 or 56 hours (as applicable), the employer must still track accruals on each pay statement.

For each covered employee, an employer must still track employees' use of front-loaded leave since employees are entitled to carry over unused leave or be paid for unused leave.

18. Can an employer front-load safe and sick leave for part-time employees?

Yes. At the beginning of each Calendar Year, an employer can provide part-time employees with the hours of safe and sick leave they would accrue based on the hours they are anticipated to work at the accrual rate of 1 hour of safe and sick leave for every 30 hours the employee is anticipated to work. However, if the employer front-loads fewer than 40 or 56 hours, the employer must still track the employee's hours worked and accrual of safe and sick leave because a part-time worker may work more hours than anticipated.

19. Can an employer have a policy that permits employees to donate unused safe and sick leave to other employees?

Yes. An employer can have a policy that allows employees to donate unused safe and sick leave to other employees, as long as the policy is voluntary.

20. Do employees who leave and return to the same employer (seasonal, rehires, etc.) get to keep their accrued safe and sick leave?

If the employee is rehired within six months, the employer must reinstate previously accrued safe and sick leave, unless the employer paid the employee for unused safe and sick leave when the employee left and the employee agreed to be paid out. Any reinstated leave is available for immediate use after the rehire.

21. If an employee is transferred to another division, location, or entity but remains employed in New York City by the same employer, is the employee entitled to keep accrued leave?

Yes. The employee gets to keep and can use at the new division, location, or entity all previously accrued safe and sick leave.

22. If a business is sold or transferred to another employer, what happens to an employee's safe and sick leave?

Changes in ownership or subcontracting relationships do not impact employees' leave balances. The employee will keep unused leave if the employer sells or otherwise transfers the business to another employer and the employee continues to work in New York City for the new employer.

The new employer must provide employees with its written safe and sick leave policies at the time of sale or transfer, or as soon as practicable thereafter.

23. Do employers have to pay unused safe and sick leave to employees who leave employment?

No. If an employee resigns, retires, is terminated, or is otherwise separated from employment, an employer is not required to pay the employee for unused safe and sick leave.

24. Can employers give employees more safe and sick leave than the amount required by the Law?

Yes. Employers may provide more generous leave than what is required by the Law.

25. Who decides how much safe and sick leave an employee can use?

As a general matter, it should be the employee who decides how much accrued safe and sick leave to use. The Law prohibits employers from deducting from an employee's leave bank when the employee does not wish to use safe and sick leave to cover an absence.

The Law does not require an employer to provide unpaid time off when an employee does not wish to use safe and sick leave to cover an absence and is not eligible for other paid leave, but other laws may require an employer to grant unpaid time off.

26. Can an employer require an employee to use a minimum daily increment of safe and sick leave?

Yes. The Law allows employers to set a reasonable minimum increment for the use of leave, but this minimum:

- can't be more than 4 hours per day;
- must be reasonable under the circumstances; AND
- must be explained in the employer's written safe and sick leave policy.

Scenarios:

A pizzeria's written safe and sick leave policy requires employees to use a minimum of 4 hours of safe and sick leave each day that an employee uses safe and sick leave. Petra has accrued more than 4 hours of safe and sick leave. She calls a half hour before she is scheduled to work to say she feels sick and will be 1 hour late. Petra wants to use 1 hour of leave for sick leave purposes. Can she?

No. The pizzeria can require Petra to use 4 hours of safe and sick leave as the minimum increment.

Juan Carlos has accrued only 3 hours of safe and sick leave while working for the pizzeria. Can the pizzeria require Juan Carlos to use a minimum of 4 hours of safe and sick leave?

No. It would not be reasonable under these circumstances for the pizzeria to require Juan Carlos to use 4 hours of safe and sick leave as the minimum increment.

Scenarios (continued):

Anya works at Bank XYZ from 8:00 a.m. to 4:00 p.m. on Mondays. She schedules a doctor's appointment for 9:00 a.m. on a Monday and notifies her employer of her intent to use leave for sick leave purposes and report to work after the appointment. Bank XYZ's written safe and sick leave policy requires employees to use a 4-hour minimum increment of safe and sick leave per day. If Anya reports to work at 11:30 a.m., how many hours of safe and sick leave may Bank XYZ require her to use?

Even though Anya reported to work before 12:00 p.m., her employer can require her to use 4 hours of leave.

27. If an employee uses more than 4 hours of safe and sick leave in a day, may the employer set fixed periods for further use of safe and sick leave after that increment?

Yes. The 4-hour minimum daily increment only applies to the first 4 hours of safe and sick leave in a day. An employer may not require that an employee take subsequent time in 4-hour increments. An employer may set fixed periods of 30 minutes or any smaller amount of time for the use of accrued safe and sick leave beyond the initial 4-hour minimum increment and may require fixed start times for such intervals.

Any fixed periods of use or fixed start times must be explained in an employer's written safe and sick leave policy.

Scenarios:

Anya is scheduled to work at Bank XYZ from 8:00 a.m. to 4:00 p.m. on Mondays. She schedules a doctor's appointment for 9:00 a.m. on a Monday and notifies her employer of her intent to use leave for sick leave purposes and report to work after the appointment. Bank XYZ's written safe and sick leave policies require employees to use a 4-hour minimum increment of safe and sick leave per day and to use leave in half-hour intervals that start on the hour or half-hour. After her doctor's appointment, Anya arrives to work at 12:17 p.m. How much safe and sick leave may Bank XYZ require Anya to use and at what time must she begin work?

Bank XYZ can require Anya to use 4.5 hours of her accrued safe and sick leave. Anya must begin work at 12:30 p.m.

Scenarios (continued):

Varun is scheduled to work from 9:00 a.m. to 5:00 p.m. on Friday. He learns that his daughter has a hearing on an order of protection scheduled for 10:00 a.m. on a Friday and notifies his employer of his intent to use safe and sick leave and return to work the same day. The employer's written safe and sick leave policies require employees to use a 4-hour minimum increment of safe and sick leave per day and to use leave in half-hour intervals that start on the hour or half-hour. If Varun wanted to leave work at 9:40 a.m. to go to the 10:00 a.m. hearing, the employer could require the employee to stop work at 9:30 a.m. When must Varun return to work?

Varun must return to work at 1:30 p.m. because his employer requires that he use a 4-hour minimum increment of safe and sick leave. If Varun arrives to work at 1:45 p.m., his employer can require him to use a half hour of time and begin work at 2:00 p.m. because the employer's safe and sick leave policies require employees to use safe and sick leave in half-hour intervals that start on the hour or half-hour.

28. If an employee gets sick in the middle of a scheduled vacation, can the employee use safe and sick leave?

No. The employer is not required to allow the employee to use safe and sick leave for time spent on a vacation because the employee was not scheduled to work during the scheduled vacation.

29. Can employees use safe and sick leave during overtime that they were required to work?

Yes. An employer must allow an employee to use safe and sick leave for any mandatory overtime hours that an employee was scheduled to work.

An employer may only deduct from an employee's safe and sick leave accruals the number of hours of safe and sick leave actually used by the employee, regardless of whether the used hours would have been classified as straight-time or overtime hours.

30. Can an employee volunteer to work additional hours or swap shifts instead of using safe and sick leave?

Yes, but only with the consent of the employer. An employee can voluntarily agree to work additional hours or swap shifts within the seven days before the absence, or within the seven days after the absence. An employer can't require an employee to work additional hours or swap shifts to make up for having used safe and sick leave.

If an employee agrees to work additional hours, but the additional time is less than the number of hours the employee was originally scheduled to work, the employee can use safe and sick leave to cover the difference.

An employee may also request a temporary schedule change instead of using safe and sick leave. Visit nyc.gov/workers to learn more about the Temporary Schedule Change Law.

Exception: An adjunct professor at an institute of higher education may work additional hours at any time during the academic term.

31. Can an employer require an employee who wants to use safe and sick leave to find a replacement employee for the missed hours?

No. An employer can't require that an employee find a replacement employee as a condition of using safe and sick leave.

32. Can an employer require an employee to telecommute or work from home instead of taking safe and sick leave?

No. An employer can't require an employee to work from home or telecommute instead of taking safe and sick leave. But an employer can offer the employee the options of working from home or telecommuting. An employee may voluntarily agree to work from home or telecommute instead of using safe and sick leave.

33. Can an employer require employees to provide advance notice of the need to use safe and sick leave?

Yes. An employer may require an employee to provide reasonable notice of the employee's foreseeable need to use safe and sick leave. Any advance notice requirement and how to provide notice must be explained in the employer's written safe and sick leave policy, which can't require more than seven days' advance notice. See FAQ 35 in this section for information about written safe and sick leave policies.

When the need to use leave is not foreseeable, employers can't require advance notice but may require notice as soon as practicable under the circumstances. An employer that requires notice of an unforeseeable need to use safe and sick leave must explain in the employer's written safe and sick leave policy how the employee should provide notice. For example, an employer may instruct employees to contact a designated phone number or email address. The notice procedure must be reasonable. An employer can't instruct employees to submit a leave request in a software system that employees don't have access to outside work or to appear in person at a worksite.

34. What is a foreseeable need to use safe and sick leave?

Foreseeable means the employee is aware of the need to use safe and sick leave seven days or more before the use.

<i>Examples:</i>	
Foreseeable Need for Safe and Sick Leave	Unforeseeable Need for Safe and Sick Leave
An employee has a doctor's visit scheduled 30 days in the future.	An employee wakes up in the morning with a fever and does not feel well enough to report for work that morning.
An employee has to attend a court hearing related to an incident of domestic violence that the employee was told to attend about 14 days before the court date.	On her way to work, an employee believes she is being followed by her estranged ex-husband against whom she has a protective order and goes to the nearest police station rather than her office.

35. Are employers required to have written safe and sick leave policies?

Yes.

Employers must maintain written safe and sick leave policies in a single writing. An employer's written safe and sick leave policies are not in a single writing if they are split up across multiple documents or locations. An employer may supplement a national policy with an NYC-specific policy, provided that the national and local policies are not confusing or contradictory.

The written safe and sick leave policies must meet or exceed all of the requirements under the Law and must explain at a minimum:

- The employer's method of calculating safe and sick leave AND
 - *If the employer uses a front-loading system:* The policy must specify the amount of leave being front-loaded and that front-loaded time is immediately available for use.
 - *If the employer uses an accrual system:* The policy must specify the rate of accrual, that accrual starts at the beginning of employment, and that an employee may use safe and sick leave as it accrues.
- Any policies regarding the use of safe and sick leave, including any limitations or conditions the employer places on use, such as:
 - Any advance notice requirements and the procedures that an employee must follow to provide notice to the employer of a need to use safe and sick leave
 - All requirements for written confirmation of the use of leave
 - All requirements for written documentation of the use of safe and sick leave
 - Any consequences for an employee's failure or delay to provide required confirmation or documentation
 - Any minimum increment and/or subsequent fixed intervals for the use of accrued safe and sick leave
- Any policy regarding employee discipline for misuse of safe and sick leave
- The employer's policy regarding carryover of unused safe and sick leave at the end of the Calendar Year
- *If the employer uses a term other than "safe/sick time" or "safe and sick leave" to describe leave provided by the employer (such as paid time off):* a statement that employees may use the leave for safe and sick leave purposes without any conditions prohibited by the Law
- A statement that the employer will not ask the employee to provide details about the medical condition that led the employee to use sick leave or the personal situation that led the employee to use safe leave
- A statement that any information the employer receives about the employee's use of safe and sick leave will be kept confidential and not disclosed to anyone without the employee's written permission or as required by law

An employer that hasn't provided an employee a copy of its written safe and sick leave policy, along with any forms or procedures required by the employer related to use of safe and sick leave, can't deny permission to use safe and sick leave or take other adverse actions based on noncompliance with the policy.

Posting and providing the Notice of Employee Rights as required by the Law will not satisfy the written policy requirements. The Law's policy requirements are in addition to the Notice requirements.

36. Can employers have other policies about time off that satisfy the requirements of the Law?

Yes. Employers can provide leave benefits that aren't called safe and sick leave benefits (vacation, sick leave, personal leave, etc.) as long as the time off meets or exceeds all of the requirements of the Law and employees can use leave for the same safe and sick leave purposes and under the same conditions permitted under the Law.

Note: If an employee has already accrued leave under a leave policy that was in existence prior to the effective date of the Law, accruals may still be subject to the requirements of New York State Labor Law § 198-c regarding benefits and wage supplements. For further guidance regarding leave policies under New York State Labor Law, contact the New York State Department of Labor, Division of Labor Standards.

37. How must an employer provide written safe and sick leave policies to employees?

Employers must distribute written safe and sick leave policies personally when an employee begins employment with the employer, within 14 days of the effective date of any policy change, and upon employee request. An employer may not distribute the Notice of Employee Rights in lieu of distributing or posting written safe and sick leave policies.

The employer must provide the safe and sick leave policy by a method that reasonably ensures that employees receive the policy, such as by email or by including it in new hire materials given directly to the employee. An employer can't post the policy at the workplace in lieu of individually providing the policy to all covered employees.

38. Can an employer make exceptions to its written safe and sick leave policies?

Yes. Employers can make exceptions to their written safe and sick leave policies for individual employees provided that the exception is more generous to the employee than the terms of the employer's written policy.

39. Can an employer provide a more generous leave policy to some employees and not others?

Yes. The Law provides minimum safe and sick leave requirements that apply to covered employees. The Law also expressly encourages employers to provide more generous leave benefits. As long as an employer gives all employees at least the benefits to which they are entitled under the Law, the employer is not prohibited from providing only one group of employees—for example, only full-time employees—with more generous leave benefits. However, employers must ensure that its policies do not violate any other laws or regulations that may apply, including anti-discrimination laws and regulations.

40. Can an employer require an employee using safe and sick leave to provide documentation?

Yes, but only if the employee uses more than three consecutive workdays of safe and sick leave and only if that requirement is in the written sick and safe leave policy that the employee received prior to using the leave. The policy must explain:

- the types of reasonable written documentation the employer will accept;
- instructions on how employees should submit documentation to the employer;
- any policy to delay payment for safe and sick leave until documentation is submitted;
AND
- instructions on how employees can submit requests for reimbursement of fees or costs to obtain documentation.

41. Can an employer require an employee to disclose the reason for using safe and sick leave?

No. An employer can't require an employee or the person providing documentation—for example, the employee's health care or social service provider—to disclose the reason for the use of safe and sick leave.

The employer can:

- require documentation after more than three consecutive workdays of safe and sick leave;
- ask the employee to submit written confirmation that the employee used leave for safe or sick leave purposes.

In addition, any documentation or confirmation requirement and consequence of noncompliance must be explained in the employer's written safe and sick leave policy.

Scenario:

Eun tells her supervisor that she needs four days of leave. She shows her supervisor a letter from her social worker stating that Eun needs to use four days of safe leave. Can Eun's supervisor require her to provide more information about her need to take safe leave?

No. Eun has provided a letter from a social service provider explaining her need to take four days of safe leave. Eun's employer may not request any more information about her need to take leave.

42. What is considered sufficient documentation to show leave was used for a safe or sick leave reason authorized under the Law?

For *sick leave*, any written documentation signed by a licensed health care provider, including a social worker or mental health counselor, that indicates the need for the amount of sick leave taken must be considered reasonable documentation and accepted by the employer.

For *safe leave*, any of the following documentation indicating the need for the amount of safe leave taken must be considered reasonable documentation and accepted by the employer:

- documentation signed by a representative of a victim services organization, an attorney, a member of the clergy, a medical provider, or other professional service provider from whom the employee or the employee's family member sought assistance;
- a police or court record; or
- a notarized letter from the employee explaining the need for safe leave.

43. Who pays for the documentation when the employer requests or requires safe or sick leave documentation after more than three days of use?

For *sick leave*, if an employer requests or requires documentation and the licensed health care provider charges the employee a fee to provide the documentation, the employer must reimburse the employee for the fee.

For *safe leave*, if an employer requests or requires documentation, the employer must reimburse the employee for all reasonable costs or expenses to obtain the documentation.

44. How much time must an employer give an employee to submit written documentation if that employee used more than three consecutive workdays of safe and sick leave?

If an employer requires an employee to submit written documentation, the employer must give the employee at least seven days from the date the employee returns to work to submit the documentation. An employer can't require employees to submit their documentation before the employee returns to work.

Note: Other laws may allow an employer to require medical clearance before an employee returns to work.

45. Can an employer require the employee to confirm in writing that the employee used safe and sick leave as permitted under the Law?

Yes. An employer can require the employee to confirm in writing that the employee used safe and sick leave for permitted purposes. However, the employer can't require the employee to provide documentation from a medical or service provider if the employee did not use safe and sick leave for more than three consecutive workdays.

Any requirement that employees confirm in writing that the employee used safe and sick leave for permitted purposes must be explained in the employer's written safe and sick leave policy.

46. Can an employer require a second opinion to verify that the documentation is valid?

No. If the employee provides documentation, the employer can't require a second opinion.

47. Do employers have to keep information about employees' need to take safe and sick leave confidential?

Yes. An employer must keep information about an employee or an employee's family member obtained because of the Law confidential unless the employee consents to disclosure in writing or disclosure is required by other laws.

The employer may consider the information if an employee requests a reasonable accommodation as the victim of domestic violence, a sex offense, or stalking under the New York City Human Rights Law.

48. Can an employer discipline an employee who misuses safe and sick leave?

Yes. An employer may take disciplinary action, up to and including termination, against an employee who uses safe and sick leave for purposes other than those provided for under the Law. However, a mistaken use of safe and sick leave does not qualify as misuse and is protected from retaliation.

An employer must include any policy on discipline for misuse of safe and sick leave in its written safe and sick leave policy.

VI. HOW SAFE AND SICK LEAVE IS PAID

1. How much does an employer have to pay an employee for paid safe and sick leave?

When an employee uses paid safe and sick leave, the employer must pay the employee at the employee's regular rate of pay at the time the paid safe and sick leave is taken.

However, the rate of pay must be at least the highest rate of pay to which the employee would be entitled under the minimum wage law or any other applicable federal, state, or local law, rule, contract, or agreement. Under no circumstance can an employer pay an employee less than the full minimum wage under New York State minimum wage laws and regulations. For information about minimum wage rates, visit the New York State Department of Labor website dol.ny.gov.

Note: The “regular rate of pay” under the Law generally means the employee's regular rate of pay at the time the safe and sick leave is taken, not the employee's regular rate for the purposes of calculating overtime.

2. If an employee uses safe and sick leave during hours that would have been overtime if worked, does the employer have to pay the overtime rate of pay?

No. Under the Law, employers are not required to pay the overtime rate of pay for leave used.

Note: Employers may only deduct from the employee's safe and sick leave accruals the number of hours of safe and sick leave actually used by the employee, regardless of whether those hours would have been classified as straight-time or overtime hours.

3. How much does an employer have to pay an employee for paid safe and sick leave if the employee is usually paid with tips?

When an employee's regular rate of pay is based in whole or in part on tips or gratuities, an employer must pay the employee at least the highest rate of pay to which the employee would be entitled under New York State's minimum wage law, or any other law or employment agreement, without taking any tip credit or tip allowance.

However, under the Law, employees are not entitled to lost tips or gratuities that they likely would have earned.

Scenario:

Joey works as a waitress for a restaurant with 15 employees in Brooklyn. In 2024, when Joey is waiting tables, her employer pays her \$10.65 per hour and takes a tip credit of \$5.35 per hour. Joey generally earns \$10-25 per hour in tips on top of the cash wage that her employer pays. If Joey takes 3 hours of sick leave for a dentist appointment, how much does Joey's employer have to pay Joey?

Joey's employer must pay her at least \$48 for her sick leave (\$16 per hour for each hour of paid safe and sick leave that Joey takes). The restaurant can't take the \$5.35 tip credit that it normally takes when Joey is working, but the restaurant does not have to pay Joey more than \$16 per hour—minimum wage in New York City in 2024—to make up for any lost pay from tips Joey probably would have earned had she worked the 3 hours instead of going to the dentist.

4. Will the payment of cash instead of supplemental benefits, such as those required by prevailing wage laws, relieve the employer from complying with the Law?

No. The employer must comply with the Law regardless of the manner in which the employee is paid.

5. If an employee has two different jobs for the same employer, or if an employee's rate of pay fluctuates for the same job, what should the rate of pay be for safe and sick leave used?

Unless a higher rate applies under another law or employment agreement, the rate of pay must be the rate or rates of pay the employee would have been paid during the time that the employee used the safe and sick leave.

Scenario:

Diep works for a clothing store. She works as a cashier 3 hours in the morning, earning the minimum wage (\$16 in 2024). The remaining 5 hours of the day she manages the store's back office for \$25 per hour. Diep is scheduled to work 8 hours on Saturday. She takes the day off for a safe leave matter. How much is the clothing store required to pay for her 8 hours of safe and sick leave?

The clothing store must pay Diep \$16 per hour for the first 3 hours of leave (\$48) that she would have earned as a cashier and \$25 per hour for the next 5 hours of leave (\$125) that she would have earned in her manager role, for a total of \$173.

6. How much does an employer have to pay an employee for safe and sick leave if the employee's salary is paid by commission?

Unless a higher rate applies under another law or an employment agreement, if an employee is paid by commission (whether base wage plus commission or commission only), the employer must pay the employee for safe and sick leave at an hourly rate that is the base wage or the minimum wage, whichever is greater.

7. How much does an employer have to pay an employee for paid safe and sick leave if the employee is paid at a flat rate regardless of the number of hours worked?

Unless a higher rate applies under another law or an employment agreement, the employee's hourly rate of pay for safe and sick leave used must be based on the hourly rate paid to the employee during the most recent workweek in which no safe and sick leave or other leave was taken.

This hourly rate is calculated by:

- i. adding together the employee's total earnings for that workweek, including tips, commissions, and supplements; AND
- ii. dividing that total by the number of hours spent performing work during that workweek or by 40 hours, whichever number of hours is less.

Under no circumstance can the rate of pay for safe and sick leave used be less than the hourly minimum wage under New York State law.

8. How much does an employer have to pay an employee for paid safe and sick leave if the employee is paid a salary and not hourly?

The Law assumes that employees who are exempt from overtime requirements under New York State law have a 40-hour workweek, unless the employee's regular workweek is fewer than 40 hours.

Unless a higher rate applies under another law or an employment agreement, the hourly rate of pay for safe and sick leave taken is calculated by dividing the employee's weekly salary by 40 hours (or by the employee's regular hours if fewer than 40).

Scenario:

Leah is a manager who is exempt from overtime requirements under New York State law. Her regular workweek is 35 hours per week (7 hours per day). She's paid a biweekly gross salary of \$5,000. Leah calls out sick on Monday and requests 7 hours of sick leave according to her employer's policy. How much does the employer have to pay Leah?

Leah is paid her regular biweekly salary of \$5,000, which includes pay for sick leave. Below is the breakdown.

Leah's weekly gross salary is \$2,500 (biweekly salary of \$5,000 divided by 2).

Leah's hourly rate of pay for safe and sick leave is \$71.43 (\$2,500 divided by 35).

Leah's biweekly salary of \$5,000 includes:

- \$500 for her 7 hours of sick leave (\$71.43 multiplied by 7); and
- \$4,500 for hours worked over the course of the biweekly pay period.

9. How soon must employees be paid after they take paid safe and sick leave?

An employee must be paid no later than the payday for the next regular payroll period beginning after the employee took paid safe and sick leave.

However, if the employer's written safe and sick leave policy requires written documentation or confirmation of use of safe and sick leave from the employee, the employer is not required to pay for safe and sick leave until the employee has provided the documentation or confirmation.

Exception: An employer must not withhold or delay payment for safe and sick leave when the employee can't obtain the required documentation due to associated costs.

Scenario:

John works at a large retail store and takes 4 consecutive days of sick leave due to a flu. The employer does not provide health insurance to its employees and John purchased a high-deductible plan that will not cover any of the cost of visiting a doctor's office or urgent care clinic to document the need for sick leave. In its written safe and sick leave policy distributed to employees, the employer explains its requirement that employees must submit reasonable written documentation of the need for safe and sick leave longer than 3 consecutive workdays. However, John can't obtain the documentation because the cost of visiting a licensed medical professional would create a financial hardship, which John tells his employer. Can John's employer refuse to pay him for his use of safe and sick leave?

No. The employer can't refuse to pay John for the sick leave based on the lack of required documentation.

Note: An employer can't withhold or delay payment of safe and sick leave due to a lack of documentation or confirmation if the employer's written safe and sick leave policies do not include:

- the requirement that employees provide confirmation of use of safe and sick leave or documentation for more than three consecutive workdays of safe and sick leave;
- the timing and manner in which the employee must provide documentation or confirmation;
- the consequences for not providing the documentation or confirmation; AND
- instructions on how employees can submit requests for reimbursement and proof of fees or costs to obtain documentation.

10. How soon must employees be reimbursed after they submit proof of fees or other costs they paid to obtain documentation of paid safe and sick leave?

If an employer requests or requires documentation and the employee has provided to the employer the documentation and proof of the fee (for sick leave) or reasonable costs (for safe leave) they paid to obtain the documentation, the employer must reimburse the employee for the fee or reasonable costs no later than the payday for the next regular payroll period beginning after the employee provides the proof.

11. Can an employer deduct money from an employee's wages to cover the cost of paid safe and sick leave?

No. An employer required to provide paid safe and sick leave can't require an employee to pay for all or part of that leave.

VII. RETALIATION

1. Can an employer penalize an employee for using safe and sick leave?

No. Retaliation is illegal. No person—including but not limited to an employer—can retaliate against employees or prevent them from exercising or attempting to exercise rights under the Law, including by:

- requesting and using safe and sick leave;
- filing a complaint with DCWP for violations of the Law;
- communicating with any person, including coworkers, about any violation of the Law;
- participating in an administrative or judicial action regarding any violation of the Law;
- informing another person of that person's rights under the Law.

2. What is retaliation?

Retaliation is any act that penalizes an employee for, or is reasonably likely to deter an employee from, exercising rights under the Law. It can include threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights under the Law, blacklisting, and maintenance or application of an absence control policy that counts safe and sick leave as an absence that may lead to or result in an adverse action.

Retaliatory acts include actions related to an employee's perceived immigration status or work authorization.

An employee does not have to explicitly refer to the Law in order to be protected from retaliation.

The Law's retaliation protections apply even if employees mistakenly but in good faith assert their rights under the Law. And retaliation can be shown when an employee's exercise or attempted exercise of rights motivated the employer to take the retaliatory action, even if other factors also may have motivated the employer.

Scenario:

Cara has been working for Great Supermarket for three years and never received a Notice of Employee Rights or her employer's written safe and sick leave policies. She asks her manager about whether she can be paid for a week off because she needs oral surgery. Her manager tells her no, and they have a short verbal disagreement. The next day, Cara is fired and told it's because of insubordination the previous day. Could this be retaliation?

Yes. Cara attempted to exercise her right to paid safe and sick leave, and her employer punished her with termination because of that attempt. Her request to use sick leave motivated her employer to fire her.

VIII. EMPLOYER RECORDS

1. What records must an employer keep?

Employers must keep their current and past written safe and sick leave policies.

Employers must create and maintain records—including employment, payroll, and timekeeping records—documenting their compliance with the requirements of the Law, specifically those records that show for each employee:

- Name, address, phone number, start date of employment, end date of employment (if applicable), rate of pay, and whether the employee is exempt from the overtime requirements of New York State Labor Law and related regulations
- Hours worked each week (unless the employee is exempt from the overtime requirements of New York State Labor Law and related regulations and has a regular workweek of 40 or more hours)
- Date and time of each instance of safe and sick leave used and the amount paid for each instance
- Any change in the material terms of employment specific to the employee
- Date that the Notice of Employee Rights was provided to the employee and proof that it was received by the employee

In addition, for each pay period, the employer must maintain records for each employee that show:

- the amount of safe and sick leave accrued and used during the pay period;
- the employee's total balance of accrued safe and sick leave; AND
- the amount of accrued safe and sick leave available for use by the employee.

2. How long must employers keep records required under the Law?

Employers must retain records for at least three years, unless otherwise required under other laws.

3. When must employers make records available to DCWP?

An employer under investigation by DCWP must provide requested records within 14 days of DCWP's Notice of Investigation, unless DCWP determines that a shorter time frame is necessary.

4. What are the consequences of an employer's failure to maintain or produce records following a request by DCWP?

An employer's failure to maintain or produce a record that is required to be maintained under the Law may subject the employer to civil penalties and, if relevant to a material fact alleged by DCWP in an enforcement proceeding, may create a reasonable inference that the fact is true.

5. Can an employer maintain electronic records?

Yes. An employer can keep electronic records as long as the employer is able to produce the records in a manner in which they can be readily inspected or examined by DCWP. If directed to provide electronic records to DCWP, an employer should provide the records in a machine-readable file format, such as spreadsheets maintained in .csv or .xlsx format.

Employers must ensure that their electronic recordkeeping complies with federal, state, and local employee privacy laws and that employees' or their family members' health or other sensitive information obtained because of the Law is kept confidential.

6. If an employer provides employees with leave benefits that exceed the Law's requirements, must the employer maintain records?

Yes. Employers must maintain records documenting compliance with the Law, including if the employer complies with the Law by providing even more benefits than what the Law requires.

7. Are the Law's recordkeeping requirements the same as those in other state laws (e.g., New York State Labor Law) or federal laws (e.g., Internal Revenue Code) that apply to employers?

No. The City Law requires employers to maintain records documenting compliance with the City Law for three years. Employers must comply with other laws and rules that apply to their businesses and their recordkeeping practices.

IX. COMPLAINTS AND ENFORCEMENT

1. Can employees file complaints with DCWP or in court?

Yes. Employees can file complaints with DCWP or in court if they believe their rights under the Law have been violated. Employees are not required to file a complaint with DCWP before filing in court. A complaint can be filed directly with any court that has proper jurisdiction over the claim.

2. What happens if an employee files a complaint with DCWP and a lawsuit in court?

If an employee files a complaint in court and with DCWP about the same violation(s), DCWP must pause its investigation of the complaint. If the court case is withdrawn or dismissed without prejudice, DCWP may then continue with the investigation.

If the court case is resolved by a judgment or settlement, DCWP must close its investigation, unless DCWP determines that the complaint alleged a violation that was not resolved by the judgment or settlement.

Workers should inform the assigned DCWP investigator of the outcome of a case filed in court.

Note: DCWP is authorized to open an investigation on its own initiative, regardless of whether there is a lawsuit pending against the same employer.

3. How do employees file a complaint with DCWP?

Employees can file a complaint in one of the following ways:

- *Online:* Visit nyc.gov/workers
- *By phone:* Call 311 (212-NEW-YORK outside NYC) and ask to be transferred to a DCWP representative to assist. Free interpretation services are available.
- *By mail or email:* Visit nyc.gov/workers to learn how.

4. Is there a deadline for employees to file complaints with DCWP or in court?

Employees must file their complaint with DCWP or in court within two years of the date they knew or should have known of the violation(s) they allege.

5. What does DCWP do with complaints?

DCWP investigates complaints to identify any potential violations of the Law. This generally involves collecting information from the employee, the employer, and any other parties that may have relevant information.

If, as a result of its investigation, DCWP believes a violation has occurred, DCWP works with the employer to come into compliance and attempts to resolve the case.

If DCWP and the employer are unable to reach a resolution, DCWP may pursue appropriate remedies by initiating a proceeding at the New York City Office of Administrative Trials and Hearings (OATH).

For information about settlement offers and what happens if an employer doesn't agree to settle a case, visit nyc.gov/dcwp.

6. Does DCWP keep employees' identities confidential?

Yes. DCWP keeps the identity of complainants and witnesses—including people who provide information to DCWP who are not complainants—confidential unless disclosing their identity is necessary to resolve the investigation or is otherwise required by law. DCWP will notify complainants before disclosing their identity whenever possible.

7. Does immigration status affect a worker's ability to file a complaint?

No. All workers have the same rights and protections under the Law, regardless of immigration status. DCWP does not collect any information about a complainant's immigration status to pursue a complaint.

8. Can DCWP conduct safe and sick leave investigations on its own initiative?

Yes. The Law authorizes DCWP to conduct an investigation on its own initiative, including when it has reason to believe that an employer may have violated the Law. DCWP does not need to receive an employee complaint in order to begin an investigation.

9. How much must an employer pay an employee for violations of NYC's Paid Safe and Sick Leave Law?

Under the Law, DCWP or a judge may order an employer to provide an employee whose rights have been violated with the following:

- Three times the wages that should have been paid for each time the employee took safe and sick leave but wasn't paid or \$250, whichever is greater
- \$500 for each time the employee was unlawfully denied requested safe and sick leave or was required to find a replacement worker or was required to work additional hours to make up for having used safe and sick leave
- Full compensation, including lost wages and benefits, damages of \$500 or \$2,500, and appropriate equitable relief for each time the employer retaliated against the employee

Additional payments may be ordered if an employer has a policy or practice of not providing or refusing to allow the use of safe and sick leave. See FAQ 11 in this section.

10. What are the maximum penalties for violations of the Law?

In addition to the monetary relief that an employer may be required to pay to employees whose rights were violated, the Law also allows DCWP to impose the following civil penalties for violations of the Law:

- Up to \$500 for failure to timely or fully respond to DCWP's request for information or documents before the first scheduled appearance date
- Up to \$500 for each first-time violation
- Up to \$750 for each second violation within two years of a prior violation
- Up to \$1,000 for each subsequent violation that occurs within two years of any previous violation
- Up to \$50 for not providing the required Notice of Employee Rights

Penalties are imposed on a per-employee and per-instance basis.

11. What happens if the employer has an official or unofficial policy or practice of not providing or refusing to allow the use of safe and sick leave as required under the Law?

The finding that an employer has such a policy or practice constitutes a violation of the Law for each and every employee affected by the policy or practice. For each employee who was affected by such a policy, the employer may be liable for payment of both monetary relief and civil penalties.

The employer may be required to:

- add the number of hours of safe and sick leave each employee should have accrued to the employee's safe and sick balance; AND
- pay each employee \$500 for each Calendar Year the policy or practice was in effect; AND
- pay civil penalties up to \$500 for each employee and for each Calendar Year the policy or practice was in effect.

X. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE

1. Does New York State also require employers to provide safe and sick leave?

Yes. As of September 30, 2020, New York State requires all private sector employers to provide paid or unpaid safe and sick leave to their employees. Learn more about New York State's Paid Sick Leave Law at [ny.gov](https://www.ny.gov).

2. Is there a difference between NYC's Paid Safe and Sick Leave Law and New York State's Paid Sick Leave Law?

Yes. The two laws are very similar but not identical, and you should consult your legal advisor with any specific questions.

Note: The City Law's standards for minimum hours or use of safe and sick leave must remain as good as or better than the State Law. In fact, the City Law specifically provides that any future minimum hours or use standards in the State Law that surpass those in the City Law will be automatically adopted and incorporated in the City Law.

3. What about overlapping jurisdiction across federal, state, and city laws—which would take precedence?

Federal and state laws take precedence when they require or allow employers to do more than NYC's Paid Safe and Sick Leave Law does.

<i>Examples:</i>	
Depending on the facts in a particular situation:	
Under FMLA , an employer may be required to provide intermittent time off in increments of time that are less than 4 hours.	Under the Americans with Disabilities Act or New York State Human Rights Law , an employer may be required to provide a leave of absence to an employee with a disability that is longer than the amount of safe and sick leave an employer must provide under NYC's Paid Safe and Sick Leave Law.
In addition, when an employer is asked to provide leave under federal or state law that goes beyond what the employee is entitled to under NYC's Paid Safe and Sick Leave Law, the employer may be able to ask the employee to provide more information about a medical condition or disability than the employee would be required to provide under NYC's Paid Safe and Sick Leave Law.	