



**GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION**

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## **20-35**

TO: ALL MEMBER FACILITIES

FROM: ROBIN C. ROSEN, ESQ., LABOR COUNSEL

DATE: OCTOBER 1, 2020

RE: NEW YORK STATE PAID SICK LEAVE LAW – EFFECTIVE  
SEPTEMBER 30, 2020

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As you are aware, the NYS 2020 budget included a new statewide paid sick leave law which takes effect on September 1, 2020. On this date, covered employees will begin accruing sick time; however, employees cannot use their accrued time until January 1, 2021. Sick leave shall be provided as follows:

- Employers with 4 or fewer employees and a net income of less than \$1 million in the prior tax year shall provide each employee with up to 40 hours of unpaid sick leave each year.
- Employers with between 5 and 99 employees and employers with 4 or fewer employees and a net income of greater than \$1 million in the prior tax year shall provide each employee with up to 40 hours of paid sick leave each year.
- Employers with 100 or more employees shall provide up to 56 hours of paid sick leave each year.

Employees shall accrue sick leave at a rate of not less than 1 hour per every 30 hours worked. However, employers may provide the full amount of sick leave in a lump sum at the beginning of each calendar year.

Starting on January 1, 2021, employees may take accrued sick leave for the following purposes:

- (i) for a mental or physical illness, injury or health condition of such employee or such employee's family member, regardless of whether such illness, injury or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;
- (ii) for the diagnosis, care or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member;
- (iii) for an absence from work due to any of the following reasons when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking;
  - (a) to obtain services from a domestic violence shelter, rape crisis center or other services program;
  - (b) to participate in safety planning, temporarily or permanently relocate or take other actions to increase the safety of the employee or employee's family members;
  - (c) to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
  - (d) to file a complaint or domestic incident report with law enforcement;
  - (e) to meet with a district attorney's office;
  - (f) to enroll children in a new school; or
  - (g) to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

For purposes of this law, "family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner. "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child"

shall mean a biological, adopted or foster child, a legal ward or a child of an employee standing in loco parentis.

Employers may set a reasonable minimum increment for the use of sick leave which shall not exceed 4 hours. Employees shall be paid at their regular rate of pay or the applicable minimum wage, whichever is greater, for the use of paid sick leave.

An employee's unused sick leave shall be carried over to the following calendar year, however, an employer with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year and an employer with 100 or more employees may limit the use of sick leave to 56 hours per calendar year. Additionally, employers are not required to pay an employee for unused sick leave upon the employee's termination, resignation, retirement or other separation from employment.

An employer shall not be required to provide any additional sick leave pursuant to this law if the employer has adopted a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements of this law and satisfies the accrual, carryover and use requirements of this law.

Upon return to work following a sick leave taken pursuant to this law, an employee shall be restored to the position of employment held by the employee prior to sick leave being taken with the same pay and other terms and conditions of employment. Additionally, upon the oral or written request of a employee, the employer shall provide a summary of sick leave accrued and used in the current calendar year and/or any previous calendar year. This information shall be provided to the employee within 3 business days of such request.

Again, although employees start to accrue sick leave pursuant to this law on September 30, 2020, they cannot utilize the time until January 1, 2021.

As of today's date, the NYS Department of Labor has not yet issued any guidance or FAQs related to this law. If guidance is issued, we will provide to member facilities.

Thank you.