

e-Alert

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New York Department of Labor Releases Final Regulations for State Sick Leave Law

Background

On September 30, 2020, the [New York State Sick Leave Law \(NYSSLL\)](#) took effect which allocated paid sick leave to New York employees outside of New York City*, with the amount of leave based on the size of the employer. The highly anticipated final regulations were published in late December 2021 and provide additional clarification to the proposed regulations.

*NOTE – NYC employees have separate sick leave requirements.

Summary

Clarifications provided by the new regulations:

Counting Employees

- NYS employers determine their size by counting all employees nationwide (even if they work outside of NY).

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Unused Leave

- An employee must be allowed to rollover all unused, accrued hours to the following calendar year.
- Employers, at their discretion, may opt to pay out employees their unused, accrued sick leave at the end of the year instead of allowing rollover.

Notice to Employer

- Although it is difficult for employers to cover for an employee's absence on short notice, the NYSSL does not require employees to provide advance notice. In fact, employers cannot deny an employee the right to use sick leave based on notification.
- If an employee uses their sick leave for three or more consecutive workdays, they are required to provide an attestation to their employer "supporting the existence of a need for sick leave." However, employers cannot require the employee or their medical provider to disclose the reason for the sick leave usage.
 - The NYSDOL indicated a template for employers to use is forthcoming.

Pay Rate

- Employees are to be paid their regular rate of pay or the applicable minimum wage, whichever is greater, for sick leave.

Employer Next Steps

NYS employers should be on the lookout for any additional regulations or guidance. It is still unclear whether the NYSSL permits employers to cap the total amount of sick leave an employee can accrue.

To be best prepared for employee questions:

- Review current sick leave policies.
- Keep track of accrued leave for employees.
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy, please [email us](#).

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