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New York State Sick and Voting Leave Guidance

While employers have been consumed with the COVID-19 pandemic and its impact on operations, New York's budget was passed and signed into law. Included in the budget was legislation that requires all employers in New York to provide their employees with sick leave and once again changes employee voting leave entitlements.

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New York State Sick Leave Program

Somewhat lost in the news amid the COVID-19 pandemic was the significant additional burden placed upon New York employers in the recently passed budget. Similar to how New York State enacted paid family leave, mandatory sick leave was enacted through the budgetary process. The law goes into effect on September 30, 2020 and employees will be able to begin using accrued sick leave on January 1, 2021.

Amount of Sick Leave

The amount of sick leave an employer must allow employees to accrue and whether such sick leave must be paid or unpaid is based upon the number of employees and, in some circumstances, the employer's net income. Employers must provide sick leave to their employees as follows:

Factors	Employee Leave Entitlement
Employers with four or fewer employees with net income less than \$1,000,000 in the prior year	Up to 40 hours of unpaid sick leave per calendar year
Employers with four or fewer employees with net income greater than \$1,000,000 in the prior year	Up to 40 hours of paid sick leave per calendar year

Employers with 5 – 99 employees	Up to 40 hours of paid sick leave per calendar year
Employers with 100 or more employees	Up to 56 hours of paid sick leave per calendar year

Leave Accrual

Employees must be permitted to accrue sick leave at a rate no less than one hour for every thirty hours worked. Accrual commences on the latter of an employee's first day of work or September 30, 2020. Employers are permitted to front load employees with sick leave at the beginning of the year. However, if an employer chooses to frontload sick leave, they cannot reduce or revoke sick leave based upon the number of hours actually worked by the employee.

Permitted Uses of Leave

Upon oral or written request to use such leave, employees can use sick leave for the following purposes:

- 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;
- 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; or

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- 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:
 - to obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - 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;
 - 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;
 - to file a complaint or domestic incident report with law enforcement;
 - to meet with a district attorney's office;
 - to enroll children in a new school; or
 - 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.

The law broadly defines the term “family member” to include an employee's child (biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis), spouse, domestic partner, parent (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), sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner.

Significantly, an employee becomes immediately eligible to accrue and use sick time as of January 1, 2021. This contrasts with, for example, the New York City and

Westchester County Earned Safe and Sick Leave Acts, which allow employers to prohibit employees from using sick leave during their first 120 or 90 days of employment, respectively. Thus, employers who previously adopted sick leave policies will need to review those policies.

Increments of Sick Leave and Compensation

Employers may require that employees use sick leave in minimum increments of no more than 4 hours. For those employers required to provide paid sick leave, such time must be paid at the greater of the employee's regular rate of pay or minimum wage.

Sick Leave Carryover and Separation of Employment

The law requires that employers allow employees to carry over unused sick leave from year to year. However, employers with less than 100 employees are not required to allow employees to use more than 40 hours of sick leave per year and employers with 100 or more employees are not required to allow employees to use more than 56 hours of sick leave per year, even if there is a greater amount of leave available in their sick leave bank. The law does not require employers to compensate employees for any unused sick leave upon separation of employment.

Based upon the text of the law, there does not appear to be a cap on such carryover. We anticipate that guidance issued by the Department of Labor will provide clarity on this issue.

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The carryover provisions appear to be another notable area of difference from the New York City and Westchester County Earned Safe and Sick Leave Acts which allow employers who frontload sick time not to permit carryover.

Employee Protections

Employers cannot require disclosure of confidential information related to the need for sick leave. Employers also cannot take adverse action against employees for using sick leave. Employees using sick leave must be restored to the same position with the same pay and other terms of employment upon return to work after using sick leave. The law also contains record retention requirements. Employers must maintain contemporaneous records for a six year period of employee accrual and use of sick leave and, upon oral or written request from an employee, the employer must provide such records for inspection within three business days.

Interaction with Local Laws, Collective Bargaining Agreements and Existing Employer Policies

The state law provides that local laws requiring sick leave shall not be preempted by the state law so long as they provide for benefits equal to or greater than those required by the states. This will surely lead to confusion by employers who operate in counties that previously enacted sick and safe leave acts. Employers in such municipalities should ensure that their policies comply with the requirements of both state and local law as there are significant differences between some local sick leave laws already in existence and that passed by the state. Moreover, collective bargaining agreements entered into

on or after September 30, 2020 may provide for the provision of comparable benefits so long as the CBA specifically acknowledges the requirements of the state sick leave law. Finally, if an employer has a sick leave, vacation or paid time off policy in place that provides an amount of time off greater than or equal to the amount of sick leave the employer is required to provide under the law, the employer need not provide additional sick leave on top of that policy so long as the policy complies with the accrual, use and carryover requirements of the law.

The New York State Department of Labor is expected to issue guidance on the statewide sick leave requirements prior to their going into effect on September 30, 2020.

New York State Voting Leave Requirements

In addition to enacting sick leave through the budgetary process, New York State amended its voting leave law for the second year in a row. This year's amendments largely undo the changes in law enacted last year and the law mostly reverts to the pre-2019 voting leave entitlements. The changes went into effect immediately. The revised law:

- Limits the amount of paid leave for a registered voter to vote to two (2) hours
- Prohibits employees from taking paid leave to vote if they have four (4) consecutive hours away from work to vote either before or after work during polling hours
- Requires employees to provide no less than two (2), but no more than ten (10), working days' notice of their need for leave from work to vote
- Requires employers to conspicuously post notice of the voting leave law in the workplace no less than ten (10) working days prior to an election

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Employers should be aware of their obligations to provide employees with such leave in advance of the upcoming primary election and the general election later this year.

For more information or if you have any questions about how these new requirements may affect your business, please contact a member of our Employment team.



Andrea B. Neuman
Partner | Chair, Employment
212.655.3513 | abn@msf-law.com



Gregg M. Kligman
Counsel | Employment
(646) 273 8209 | gmk@msf-law.com



Samantha L. Frenchman
Associate | Employment
(212) 655-3580 | slm@msf-law.com



Cassidy Mara
Associate | Employment
(646) 273 8204 | cm@msf-law.com

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