

# The new New York State Paid Sick Leave Law in a Nutshell

By: Danny D. De Voe

Due to the COVID pandemic, New York State employers have been confronted with many challenges over the past two years trying to keep their employees safe while complying with the rapidly evolving laws. Now that we have hopefully put COVID in the rearview, it is time for all New York State employers to ensure that you are in compliance with the legislation that has been passed since the pandemic began. The New York Paid Sick Leave Law is one such law that all New York State employers need to be familiar with.

The new Paid Sick Leave Law requires (i) employers with fewer than 5 employees but profits in excess of \$1m per year to provide 40 hours *unpaid* sick leave per year, (ii) employers with 5-99 employees to provide 40 hours of *paid* sick leave per year, and (iii) employers with 100 or more employees to provide 56 hours *paid* sick leave per year. While an employer is permitted to frontload sick leave, absent the foregoing, an employee accrues one hour of sick leave for every 30 hours worked and the Department of Labor stated in its Final Regulations that employees must be allowed to accrue sick leave on a fractional basis (i.e., .33 hours for a 10-hour workweek). Employees are entitled to carry over accrued, but unused, sick leave from one year to the next. However, this provision is somewhat meaningless at this time as an employer may cap the number of hours that may be taken in one year and is not required to pay an employee for accrued, but unused, sick leave upon termination *so long as that policy is in writing*. The law also allows an employer to mandate that an employee must take leave in reasonable minimum increments (not to exceed 4 hours) *so long as that policy is in writing*. However, the Department of Labor stated in its Final Regulations that an employer cannot use this provision to create a probationary period where the law does not so provide and that an employee is entitled to take leave once accrued. It is important to note that there is no exemption for seasonal, part-time, or temporary employees. It is also important to note that the law covers much more than the employee's own illness as it also covers caring for a sick family member or someone the employee considers like family and absences related to such things as domestic violence, sexual offenses, and human trafficking. Paid sick leave may accrue on an anniversary or an annual basis *so long as that policy is in writing*.

It is finally important to note that, where there is a municipal sick leave law also in effect (such as in New York City and Westchester), a New York State employer must comply with both the New York State and the applicable municipal

law. Thus, it is a suitable time for all New York employers to ensure that your employee handbook is up-to-date and, if you do not yet have an employee handbook, now is the time to have one drafted.