

New York State COVID-19 Emergency Sick Leave

Pursuant to New York law (2020 NY S.B. 8091), eligible employees are entitled to COVID-19 Emergency Sick Leave for certain reasons related to the COVID-19 pandemic. Depending on certain factors related to the employer, the leave may be paid or unpaid.

Note: For additional information on New York State leaves related to COVID-19, visit the New York Family and Medical Leave page.

Covered Employers

The law applies to all employers in New York State.

Eligible Employees

Employees are eligible for sick leave if they are subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19. However, sick leave is not available to an employee who is:

- Deemed asymptomatic or has not yet been diagnosed with any medical condition
- Physically able to work while under an order of quarantine or isolation, whether through remote access or other similar means

Important: An employee is not eligible for **paid sick leave** if the employee is subject to a mandatory or precautionary order of quarantine because the employee has returned to the United States after traveling to a country for which the Centers for Disease Control and Prevention has a level two or three travel health notice and the travel to that country was not taken as part of the employee's employment or at the direction of the employee's employer, and if the employee was provided notice of the travel health notice and the limitations of this subdivision prior to such travel. Such employee will be eligible to use accrued leave provided by the employer, or to the extent that such employee does not have accrued leave or sufficient accrued leave, unpaid sick leave must be provided for the duration of the mandatory or precautionary quarantine or isolation.

Reasons for Leave

Eligible employees may take sick leave following the issuance of a mandatory or precautionary order of quarantine or isolation by the State of New York, the health department, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.

Amount of Leave

Covered employers must provide sick leave benefits as follows:

- Employers with 10 or fewer employees as of January 1, 2020 and a net income of \$1 million or less in 2019 must provide **unpaid sick leave** until the termination of the order of quarantine or isolation.
- Employers with 10 or fewer employees as of January 1, 2020 and a net income of more than \$1 million in 2019 must provide at least **five days of paid sick leave** and unpaid leave until the termination of the order of quarantine or isolation.
- Employers with 11 to 99 employees as of January 1, 2020 are required to provide at least **five days of paid sick leave** and unpaid leave until the termination of the order of quarantine or isolation.
- Employers with 100 or more employees as of January 1, 2020 are required to provide at least **14 days of paid sick leave** during any order of quarantine or isolation (comprising the entirety of quarantine).

All leave is provided without loss of an employee's accrued sick leave.

Certification

A mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19 is sufficient proof of the need to take leave.

Right to Reinstatement

Employees are entitled to job restoration when they return from quarantine with the same pay, terms, and conditions of employment as before quarantine.

Retaliation

Employers may not retaliate or discriminate against any employee for taking leave.

New York State Sick Leave

New York State's Sick Leave Law, located at N.Y. Labor Code § 196-b goes into effect on September 30, 2020, but employees are not entitled to use sick leave benefits until January 1, 2021.

Note: The state sick leave law does not prevent localities with a population of at least one million from enacting their own sick leave provisions that meet all state minimums. Moreover, local sick leave laws in place on September 30, 2020 are not diminished or limited by the state law.

Coverage

The law generally applies to all employers in New York State.

Eligibility

All employees are generally eligible for sick leave.

Reasons for Leave

Eligible employees may use sick leave for the following permitted purposes:

- A mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time that the employee requests such leave;
- 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, the employee or the employee's family member; or
- 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, relocate, or other actions to increase their, or family member's, safety;
 - 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 their own, or a family member's, health or safety or to protect those who associate or work with the employee.

Note: If the employee committed the domestic violence crime, they are not entitled to leave. For purposes of the law:

- **Family member** means 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** means 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** means a biological, adopted, or foster child, a legal ward, or a child of an employee standing in loco parentis.

Amount of Leave

Covered employers must provide sick leave benefits as follows:

- Employers with four or fewer employees in any calendar year must provide at least 40 hours of unpaid sick leave to each employee per calendar year. However, if these employers have a net income of greater than one million dollars (in the previous tax year) then the 40 hours of leave must be paid;
- Employers with between five to 99 employees in any calendar year must provide at least 40 hours of paid sick leave to each employee per calendar year; and
- Employers with 100 or more employees in any calendar year must provide at least 56 hours of paid sick leave to each employee per calendar year.

For determining employee count, a calendar year is the 12-month period from January 1st through December 31st. For all other purposes, a calendar year is either the twelve-month period from January 1st through December 31st, or a regular and consecutive twelve-month period, as determined by the employer.

Accrual and Use

Employees accrue sick leave at a rate of one hour per every 30 hours worked. Accrual begins at the later of the employee's start date or September 30, 2020 and is subject to use and accrual limitations. However, employees may not use accrued sick leave until January 1, 2021.

Employers may set a reasonable minimum increment for the use of sick leave (may not exceed 4 hours).

Frontloading

Employers may frontload the entire amount of required sick leave at the beginning of the calendar year. However, employers may not reduce or revoke any frontloaded sick leave based on the numbers of hours actually worked by an employee during the calendar year.

Carryover and Use Caps

Unused sick leave carries over to the following calendar year, with the following use caps:

- Employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year
- Employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year

Confidentiality

Employers may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of such employee or such employee's family member, or information relating to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave.

Compensation

Employees must receive compensation at their regular rate of pay, or the applicable minimum wage, whichever is greater, for their paid sick leave.

Leave Statement

Upon an employee's verbal or written request, employers must provide a summary of the sick leave amounts they accrued and used in the current calendar year and/or any previous calendar year. Employers must provide this information to the employee within three business days of their request.

Pre-Existing Leave

Employers are not required to provide any additional sick leave if they have a pre-existing sick leave policy or time off policy that provides employees with an amount of leave that meets or exceeds legal requirements and also satisfies accrual, carryover, and use requirements.

Right to Reinstatement

Employees must be restored to the position they held prior to taking sick leave (with the same pay, terms, and conditions of employment) upon return from sick leave.

Upon Termination

Employers are not required to pay an employee for unused sick leave upon their termination, resignation, retirement, or other separation from employment.

Recordkeeping

Employers must maintain records showing the amount of sick leave provided to each employee, for each week worked, along with the other standard payroll records.

Localities

New York City Earned Safe and Sick Time Act

According to the New York City Earned Safe and Sick Time Act, located at N.Y.C. Admin. Code §§ 20-991 et seq., employers must provide safe and sick leave for an employee's, or their family member's, care and treatment.

Covered Employers

All employers are required to provide safe and sick leave but the amount varies based on employer size and income:

- Employers with four or fewer employees:
 - And a net income of \$1 million **or less** in the previous tax year *are* required to allow for accrual and use of up to 40 hours of **unpaid** safe/sick time per calendar year and carryover of up to 40 hours.
 - And a net income of \$1 million **or more** in the previous tax year are required to allow for accrual and use of up to 40 hours of **paid** safe/sick time per calendar year and carryover of up to 40 hours.
- Employers with five to 99 employees (regardless of employer income) must allow for accrual and use of up to 40 hours of paid safe/sick time per calendar year and carryover of up to 40 hours.
- Employers with 100 or more employees (regardless of income) will be required to allow for accrual and use of up to 56 hours per calendar year of paid safe/sick time and carryover of up to 56 hours.

Covered Employees

Any employee who is employed for hire within New York City and who performs work on a full-time or part-time basis, including work performed in a transitional jobs program, are covered by the law. Covered employees also include:

- Employees who are family members but not owners.
- Employees who live outside of New York City but work in New York City. This includes employees who are based outside of New York City but work in New York City on an occasional basis. Of note, making deliveries or pickups in New York City is performing work in New York City.
- Owners who are considered employees under the New York State Labor Law.
- Per diem and on-call employees. Per diem or on-call employees who are covered by the law can use safe and sick leave only for hours they have been **scheduled to work**, which does not include shifts when they were asked to be available or on call, unless the employee is required to remain on call on the employer's premises.
- Temporary employees.
- Undocumented employees.

Employees who telecommute are covered by the law for the hours when they are physically working in New York City, even if the employer is physically located outside New York City. Employees who telecommute are not covered by the law for the hours when they are not physically working in New York City, even if the employer is physically located in New York City.

Exemptions

The following are not covered by the law:

- Students in federal work-study programs.
- Participants in Work Experience Programs.
- Employees whose work is compensated by qualified scholarship programs.
- Independent contractors who do not meet the definition of employee under New York State Labor Law.
- Certain employees subject to collective-bargaining agreements, if the agreement expressly waives the law's provisions and provides comparable benefits.
- Employees in the grocery and construction industries, who are exempt if the collective-bargaining agreement expressly waives the benefits even if a comparable benefit is not provided. •Physical therapists, occupational therapists, speech language pathologists, and audiologists if they are:
 - Licensed by the New York State Department of Education;

- Call in for work assignments at will;
- Determine their own work schedule;
- Can reject or accept any assignment; and
- Are paid an average hourly wage of at least four times the federal minimum wage.

Permitted Purposes

Safe time may be used for any of the following reasons when the employee, or their family member, is a victim of a domestic violence, family offense matter, sexual offense, stalking, or human trafficking:

- Domestic violence shelter, rape crisis center, or other shelter or services program.
- Safety planning, relocation, or other actions to increase their safety from future related crimes.
- Meeting with an attorney or other social service provider to obtain information and advice on, and to prepare for or participate in any criminal or civil proceeding, including but not limited to matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, or discrimination in employment, housing, or consumer credit.
- Filing a complaint or domestic incident report with law enforcement.
- Meeting with a district attorney's office.
- Enrolling children in a new school.
- Other actions necessary to maintain, improve, or restore their physical, psychological, or economic health or safety or to protect the employee's associates and coworkers.

Sick leave may be used for the following:

- The employee's own mental or physical illness, injury, or health condition.
- The employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition.
- The employee's need for preventive medical care.
- The employee's elective surgery, including organ donations.
- Care of a family member who needs medical diagnosis, care, or treatment of an illness, injury, or health condition, or who needs preventive medical care.
- Care of a family member who has elective surgery, including organ donations.

- Closure of employee's place of business due to a public health emergency (as declared by the Commissioner of the New York City Department of Health and Mental Hygiene or the Mayor).
- The employee's need to care for a child whose school or childcare provider is closed due to a public health emergency.

A **family member** is any of the following:

- Child (biological, adopted, or foster child; legal ward; child of an employee standing in loco parentis) and grandchild (child of an employee's child).
- Spouse and domestic partner.
- Parent and grandparent (parent of an employee's parent).
- Child or parent of an employee's spouse or domestic partner.
- Sibling (including a half, adopted, or step sibling).
- 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.

Rate of Pay

Employers must pay an employee for paid safe and sick time at their regular rate of pay *when the leave was taken*. The rate of pay may not be less than:

- The highest applicable rate of pay the employee would be entitled to; or
- Any other applicable federal, state, or local law, rule, contract, or agreement.

The rate of pay must be calculated without any tip credit or tip allowance.

Accrual

Under the law, all employees accrue one hour of safe and sick leave for every 30 hours worked and are entitled to 40 hours of safe and sick leave per calendar year. Effective January 1, 2021, employers with 100 or more employees must provide up to 56 hours of paid leave per calendar year.

Accrual begins on the first day of employment and, effective September 30, 2020 may be *used as it is accrued* except for small employers with four or fewer employees (and a net income one million dollars or more during the previous tax year) who are not subject to this "use as accrued" until January 1, 2021.

Additionally, employees of an employer with 100 or more employees may use any accrued amount of paid safe and sick time that exceeds 40 hours per calendar year on January 1, 2021.

Carryover and Use

Carryover is as follows:

- For employees of employers with 99 or fewer employees, up to 40 hours of unused safe and sick time must be carried over to the following calendar year; and
- For employees of employers with 100 or more employees, up to 56 hours of unused safe and sick time must be carried over to the following calendar year.

Use is as follows:

- Employers with 99 or fewer employees are not required to:
 - Allow the use of more than 40 hours of safe and sick time in a calendar year; or
 - Carryover unused paid safe and sick time that was paid out to the employee at the end of the calendar year (when it was accrued) and the time is immediately frontloaded in full on the first day of the subsequent calendar year.
- Employers with 100 or more employees are not required to:
 - Allow the use of more than 56 hours of safe and sick time in a calendar year; or
 - Carryover unused paid safe and sick time that was paid out to the employee at the end of the calendar year (when it was accrued) and the time is immediately frontloaded in full on the first day of the subsequent calendar year.

Employees determine how much accrued safe and sick time they need to use; however, employers may set a reasonable minimum increment for its use and it cannot exceed four hours per day. The law does not impose a waiting period because accrued safe and sick time can be used.

Frontloading

Employers may elect to frontload safe and sick leave by providing all hours (40 hours for employers with 99 or fewer employees and 56 hours for employers with 100 or more) at the beginning of the year.

Part-Time Employees

At the beginning of each calendar year, an employer may front-load leave for part-time employees based on the hours they are anticipated to work (at the accrual rate of one hour of leave for every 30 hours the employee is anticipated to work).

If an employer front-loads fewer than 40/56 hours, the employer must track the employee's hours worked and accrual because a part-time worker may work more hours than anticipated. If the employee works more hours than anticipated, the employer must allow the employee to accrue leave at the rate of one hour for every 30 hours worked until the total amount of front-loaded hours, plus accrued hours per

calendar year, equals 40/56.

Part-time employees who are front-loaded less than 40/56 hours in a calendar year must be allowed to use up to 40/56 hours of safe and sick leave in a calendar year if they have accrued it. An employer who front-loads fewer than 40/56 hours must allow employees to carry over up to 40/56 hours of unused safe and sick leave into the new calendar year, in addition to front-loading the amount of time the employer expects the employee to earn in the new calendar.

Note: If the employer does not calculate employees' use and accruals, the employer cannot change its policy from accrual to front-loading in the new calendar year since employees are entitled to carry over (and use) unused leave at the beginning of the new calendar year.

Pay Out of Unused Leave

An employer's payout policy (if applicable) must be included in the written sick leave policy. Employers may pay out up to 40/56 hours of unused sick leave at the end of their calendar year, but only if the employer front-loads 40/56 hours of sick leave at the beginning of the new calendar year.

Employers may also pay out unused sick leave upon termination. However, employers are never permitted to pay out sick leave as it accrues since that would leave employees without an opportunity to take off from work to care for themselves or family members.

Existing or Other Time Off Policies

Employers with an existing policy allowing employees to use safe and sick leave must update their policy to meet or exceed the requirements of the law. Other time off policies that meet or exceed the law and that can be used for like are acceptable. For example, some employers allow employees paid time off for other purposes, such as vacation or personal leave. The employer does not have to provide additional time designated for safe and sick leave if the vacation or personal leave days can be used for safe and sick leave and the employer's policies meet other legal requirements.

Transfer, Termination, and Rehire

If an employee is transferred to a separate division, entity or location (location) in the city of New York, but remains employed by the same employer, then the employee is entitled to all safe and sick leave accrued at the prior location and is entitled to retain or use all of it.

When an employee is separated from employment and rehired within six months of the separation by the same employer, then the employee's previously accrued, but unused, safe and sick leave must be reinstated. The employee is also entitled to use the leave any time after rehire. However, employers are not required to reinstate safe and sick leave to the extent that the employee was paid for unused accrued safe and sick leave prior to separation and the employee agreed to accept such pay for it.

Successor Employer

If an employer sells its business or the business is otherwise acquired by another business, an employee will retain and may use all accrued safe time and sick time if the employee continues to perform work within the City of New York for the successor employer. If the successor employer has fewer than five employees, and the former employer had more than five employees, the employee is entitled to use and be compensated for unused safe time and sick time accrued while working for the former employer, until such safe time and sick time is exhausted.

A successor employer must provide employees with its written safe time and sick time policies at the time of sale or acquisition, or as soon as practicable thereafter, which must include a policy that complies with these provisions.

Employer Notice and Policy

Employers must provide all employees with the [Notice of Employee Rights](#), which includes the terms of accrual and use, the employer's calendar year, the right to be free from retaliation, and the right to file a complaint. The notice must be in English and the primary language spoken by the employee if the translation is available from the New York City Department of Consumer Affairs. The notice must also be conspicuously posted at an employer's business in an area accessible to employees.

This notice must be provided to each employee when they first begin working for the employer. Current employees must be given this notice within 30 days of September 30, 2020 (the amended law's effective date).

Pay Statements

The amount of safe and sick time accrued and used during a pay period and an employee's total balance of accrued safe and sick time must be on each employee's pay statement or other form of written documentation provided to them each pay period.

Employee Notice

If the need is foreseeable, employers can require up to seven days' advance notice of an employee's intention to use safe and sick leave. If the need is unforeseeable, employers may require an employee to give notice as soon as reasonable. An employer's policy must state both notice requirements. If an employee does not comply with an employer's distributed, written notice policy, the employer can deny use of safe and sick leave if the required notice, under the circumstances, was reasonable.

Documentation

For safe time and absences of more than three consecutive workdays, an employer may require reasonable documentation that the use of safe time was for an authorized purpose. The following are forms of acceptable documentation:

- Documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing domestic violence, family offense matters, sex offenses, stalking, or human trafficking and their effects.
- A police or court record.
- A notarized letter from the employee explaining the need for such time.

Employers may not require that documentation specify the details of the domestic violence, family offense matter, sexual offense, stalking, or human trafficking. Employers must reimburse employees for all reasonable costs or expenses they incurred when getting documentation for the employer.

Similarly, for sick time and absences of more than three consecutive workdays, an employer may require reasonable documentation that the use of sick time was for an authorized purpose. For example, documentation signed by a licensed health care provider indicating the need for the sick time that was taken is appropriate required documentation. Employers may not require that documentation specify the nature of the employee's or family member's injury, illness, or condition, except as required by law. If a health care provider charges an employee a fee for providing the documentation their employer requested, the employer must reimburse the employee for the fee.

Confidentiality

Employers may not require the disclosure of details relating to either of the following as a condition of providing safe and sick time:

- An employee's or family member's medical condition.
- An employee's or family member's status as a victim of domestic violence, family offenses, sexual offenses, stalking, or human trafficking.

Additionally, related health information must be treated as confidential and not disclosed except by the affected employee with their written permission or as required by law.

Note: Employers may consider information provided with a request for safe time as it relates to a request for reasonable accommodation, and are not in violation of the confidentiality protections.

Recordkeeping

Covered employers must keep and maintain records documenting compliance with the law for at least three years. The records must be made available to the Department of Consumer Affairs upon notice at an agreed upon time of day.

Retaliation and Interference

It is illegal to interfere with investigations or to retaliate against employees who exercise their rights under the Paid Safe and Sick Leave Law. Employers may not retaliate against employees for requesting or using safe and sick leave. Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in an employee's hours, or any other adverse employment action against an employee who exercises or attempts to exercise any right guaranteed under the law.

Westchester County Earned Sick Leave Law

According to the Westchester County Earned Sick Leave Law, employers with five or more employees must provide paid sick leave, and employers with fewer than five employees must provide unpaid sick leave, for employees to care for themselves or a family member. However, the law does not limit employers from offering more generous sick-time benefits, nor does it affect collective-bargaining rights.

Note: The law will be located in Chapter 585 of the Laws of Westchester County.

Covered Employers

Employers covered by the law are any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service. However, the law does not cover governmental agencies.

Covered Employees

Employees covered by the law are those employed for hire by an employer in any employment within Westchester County for more than 80 hours in a calendar year who perform work on a full-time or part-time basis, including work performed in subsidized private sector and nonprofit employment programs.

Exceptions

The law does not cover:

- Work performed as a participant in a work experience program established by a social services district.
- Work performed under a federal work study program.
- Work performed by employees who are compensated by or through federally qualified scholarships.

Permitted Purposes

All earned sick time may be use for:

- Care for the employee's or a family member's mental or physical illness, injury, or health condition, treatment for it, or preventive medical care. Any employer may authorize an employee's immediate use of earned sick time, for these same purposes for the employee, if the employer reasonably determines it is necessary and is willing to pay for the leave.
- Care for the employee or a family member when their presence in the community may jeopardize the health of others, per public health authority order, because of exposure to a communicable disease whether or not the employee or family member has actually contracted it.
- The employee's workplace closure, or the closure of the daycare, elementary, or secondary school where the employee's child attends, due to public health emergency.

A **family member** is any of the following:

- An employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent. •The child or parent of an employee's spouse, domestic partner, or household member.

Household members are:

- Persons related by consanguinity or affinity.
- Persons legally married to or in a domestic partnership with one another.
- Persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household.
- Persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time.
- Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

Accrual and Compensation

All employees, except for domestic workers, accrue one hour of sick time for every 30 hours worked and up to 40 hours of sick leave per year, unless the employer sets a higher limit. Accrual begins at the later of either the commencement of employment or 90 days after the law takes effect. Employers must compensate employees for the leave period at their regular wage rate if they have five or more employees; otherwise, the leave is unpaid.

Full-time, part-time, and temporary employees are all counted towards an employer's employee count. However, if the employee number fluctuates each week, then the number of employees for the current calendar year may be based on the average number of employees who worked per week during the preceding calendar year.

Domestic Workers

Domestic workers, as defined under N.Y. Labor Law § 2(16), employed for hire within Westchester County for more than 80 hours in a calendar year on a full-time or part-time basis, are covered by the law. Domestic workers accrue one hour of sick time for every seven days worked. This is in addition to the one day of rest as required by N.Y. Labor Law § 161(1). Additionally, all domestic workers, regardless of employer size, are entitled to earn and use up to 40 hours of earned paid sick time in a year, unless the employer selects a higher limit.

Use and Carryover

Employees may be required to work for the employer for 90 days before using earned sick time. If an employee only needs to use a portion of a day of earned sick time, the employee may use a minimum of four hours and, if more time is needed, then leave can be used in the smallest increment that the employer's payroll system uses to account for absence or use of other time.

Unused, earned sick time can be carried over to the following year, provided that the maximum amount of sick leave for any given year remains at 40 hours.

Payout of Unused Leave

Employers are not required to provide financial or other reimbursement for unused accrued earned sick time to an employee upon termination, resignation, retirement, or other separation from employment.

Existing or Other Time Off Policies

In lieu of calculating the accrual of earned sick time, an employer may provide an employee with sick time and personal time which, if combined, equals 40 hours or more per calendar year, or the year as determined by the employer (for example, the employee's anniversary date). However, employees must be permitted to take time as needed for sick time, with no advance notice necessary and no restrictions other than that required under the earned sick time law.

Replacement Worker

Employers may not require, as a condition of an employee's use of earned sick time, that the employee find another employee to work during the sick time absence.

Transfer, Termination, and Employer Succession

If any employee, including a domestic worker, is transferred to a separate division, entity, or location (division) in Westchester County, but remains employed by the same employer, then he or she is entitled to all unused earned sick time accrued at the former division so long as it is also located in Westchester County.

When an employee is separated from employment and is rehired within nine months by the same employer, previously accrued unused earned sick time must be reinstated. When an employer is succeeded by another, all employees of the original employer (who remain employed by the successor) are entitled to all the unused earned sick time they accrued under the original employer.

Employer Notice and Policy

All employers must give employees a copy of the earned sick leave law, and written notice of how it applies to that employee, at the commencement of employment or within 90 days of the law taking effect. An employer that requires notice of the need to use earned sick time must provide a written policy that contains the procedures for the employee to provide notice. An employer that has not provided a copy of its written policy to the employee must not deny earned sick time to the employee based on noncompliance.

Employee Notice

Earned sick time must be provided upon an employee's verbal or written request. The request may also be by electronic means or by any other means acceptable to the employer. When possible, the request must include the expected duration of the absence. When the use of earned sick time is foreseeable, the employee must make a good faith effort to provide notice to the employer in advance and make a reasonable effort to schedule the use of earned sick time in a manner that does not unduly disrupt the employer's operations.

Documentation

Employers may require an employee provide reasonable documentation that the earned sick time was used for a permitted purpose if the employee uses sick time for more than three consecutive work days. Documentation provided by the employee and signed by a health care professional indicating that earned sick time is necessary is reasonable documentation. Employers cannot require a doctor to provide a note containing information in violation of the federal Health Insurance Portability and Accountability Act (HIPAA).

Confidentiality

Health information about an employee or family member obtained solely for the purposes of utilizing sick time must be treated as confidential and not be disclosed except with the written permission of the affected employee, unless such disclosure is otherwise legally required. Any health or safety information possessed by an employer regarding an employee or family member must be maintained on a separate form and in a separate file from other personnel information.

Posting

Employers must display a copy of the earned sick leave law and a poster in English, Spanish, and any other language deemed appropriate by the County of Westchester, in a conspicuous location accessible to employees.

Recordkeeping

For three years employers must retain records clearly documenting the hours worked by employees and earned sick time accrued and taken by employees. Failure to retain these records as required raises a rebuttable presumption of a violation.

Retaliation and Interference

It is prohibited:

- For an employer, or any other person, to interfere with, restrain, or deny the exercise of, or the attempt to exercise, the right to use earned sick leave.
- For an employer to include used earned sick time as an absence that may lead to or result in discipline, discharge, demotion, or suspension.
- For an employer to take retaliatory personnel action or discriminate against an employee because he or she requested to use or has used earned sick time.
- For an employer to take retaliatory personnel action or discriminate against an employee that has informed another of his or her rights under the earned sick leave law.
- There is a rebuttable presumption of unlawful retaliatory personnel action whenever an employer takes adverse action against an employee within 90 days of the filing of a complaint regarding an employer's alleged violation of the earned sick leave law.

Schedule Changes

New York City Required Temporary Schedule Changes for Personal Events

According to N.Y.C. Admin. Code §§ 20-1261-1263, New York City employers must grant an employee's request for a temporary change to his or her work schedule twice per calendar year for personal events and up to one business day per request.

A **personal event** is:

- The need for a caregiver to provide care to a minor child or care recipient;
- An employee's need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member, or the employee's care recipient is a party; or
- Any circumstance that would constitute a basis for permissible use of safe time or sick time under the New York City Earned Safe and Sick Time Act.

Employees may request the following schedule changes:

- Limited change in the hours, times, or locations where they work.
- Using paid time off.
- Working remotely.
- Swapping or shifting work hours.
- Using short-term unpaid leave.

Exemptions and Denial of Request

The law does not apply to those employees who:

- Are covered by a collective-bargaining agreement that waives the provisions of the law and addresses temporary schedule changes.
- Have been employed for fewer than 120 days.
- Work primarily for motion picture, television, or live entertainment industry employers.
- Work fewer than 80 hours in the city in a calendar year.

An employee's request may be denied if the employee has already used his or her two allotted days for the change. Additionally, if the employee uses two business days for one request, the employer is not required to grant a second request in that same calendar year.

Procedures

Employees must provide notice of the need for a temporary schedule change as soon as they become aware of the need for the change. Notice must be provided to the employer or supervisor and must be accompanied by a proposal for the temporary change, unless the leave is without pay. Employers must immediately respond to requests.

Neither an employee's initial request nor the employer's initial response must be in writing; however, a written notice is later required, as follows:

- Employees must submit a written notice of the need for a temporary schedule change by the second business day after returning to work. Employers may require this notice be electronic.
- A written response from the employer is required as soon as practicable but no later than 14 days after the employee's written request was submitted. No written employer response is required if there was no written employee notice.

An employer's written response must include:

- Whether the employer agreed with the request or will provide the change as unpaid leave. Granting unpaid leave is not a denial.
- If the employer denies the request, then an explanation for the denial.
- How many requests and how many business days the employee has left in the calendar year once the employer's decision is made.

Interaction with Other Laws

Employees are not required to use leave accrued under the Earned Safe and Sick Time Act before requesting schedule changes for personal events. Additionally, an employer granting unpaid leave for a personal event does not count towards an employer's obligation to provide sick time under the Earned Safe and Sick Time Act, nor does leave granted under the Earned Safe and Sick Time Act count towards an employer's obligation to grant leave under the temporary schedule changes for personal events provisions.