

What Employers Need to Know About New York State's New Mandatory Sick Leave Law

By James R. Grasso
Phillips Lytle LLP

In the midst of the blizzard of New York State and federal laws enacted and Executive Orders issued by Governor Cuomo to respond to the COVID-19 crisis, State employers might be forgiven if they have overlooked recently enacted § 196-b of the New York Labor Law. But, as the saying goes, "Ignorance of the law is no excuse." Section 196-b entitles all employees in New York State to job-protected sick leave, which must be paid or unpaid depending on the employer's size, beginning on January 1, 2021. This sick leave is in addition to any leave an employee may be entitled to under the New York COVID-19 Sick Leave Law and the Families First Coronavirus Response Act. This article provides a guide to assist employers in meeting their obligations under the new sick leave law.



James R. Grasso
Partner

Existing Leave Policies and Collective Bargaining Agreements

An employer that has a sick-leave or time-off policy that provides employees with an amount of leave that meets or exceeds the requirements of the new law, including its accrual, carryover and use requirements, is not required to provide employees with any additional sick leave.

The new law allows unions to negotiate terms and conditions of sick leave that are different from those required by the new law. It also allows collective bargaining agreements entered into on or after September 30, 2020, to provide comparable benefits in the form of paid days off (consisting of leave, compensation, other benefits or some combination thereof) in lieu of the leave required by the new law.

However, to take advantage of these provisions, the collective bargaining agreement must specifically acknowledge the provisions of the new law.

Return-From-Leave Requirements and Job Protections

Upon returning from leave, employees must be restored to the position they held prior to taking leave with the same pay and other terms and conditions of employment. Employers are also prohibited from discharging, threatening, penalizing, or in any other manner discriminating or retaliating against an employee who has exercised his or her rights under the new law.

Next Steps for Employers

To comply with the new law, employers should:

- Review and update current sick leave policies as needed or, where appropriate, adopt a compliant policy; and
- Train human resources professionals, supervisors and managers on the law's requirements.

The New York State Department of Labor is expected to issue regulations for the new law, so employers should be prepared to review them once released.

James R. Grasso is a partner with Phillips Lytle LLP and a member of the Labor & Employment Practice Team. He concentrates his practice in counseling and representing management in all areas of labor and employment law and litigation. He can be reached at jgrasso@phillipslytle.com or (716) 847-5422.

Leave Amounts and Paid/Unpaid Leave

Employers must provide the following paid or unpaid leave under the law:

- Employers with four or fewer employees in any calendar year with a net income up to \$1 million in the previous tax year must provide employees with up to 40 hours of *unpaid* sick leave in each calendar year.
- Employers with four or fewer employees in any calendar year with a net income greater than \$1 million in the previous tax year must provide employees with up to 40 hours of *paid* sick leave in each calendar year.
- Employers with between five and 99 employees in any calendar year must provide employees with up to 40 hours of *paid* sick leave in each calendar year.
- Employers with 100 or more employees in any calendar year must provide employees with up to 56 hours of *paid* sick leave each in calendar year.

Reasons for Leave

Leave under the new sick leave law may be taken for the following reasons:

- A mental or physical illness, injury or health condition of an employee or an employee's family member;
- 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 – an employee or an employee's family member; or
- An absence from work related to obtaining services and interacting with the criminal justice system as specified in the new law when the employee or employee's family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking.

Leave Accrual

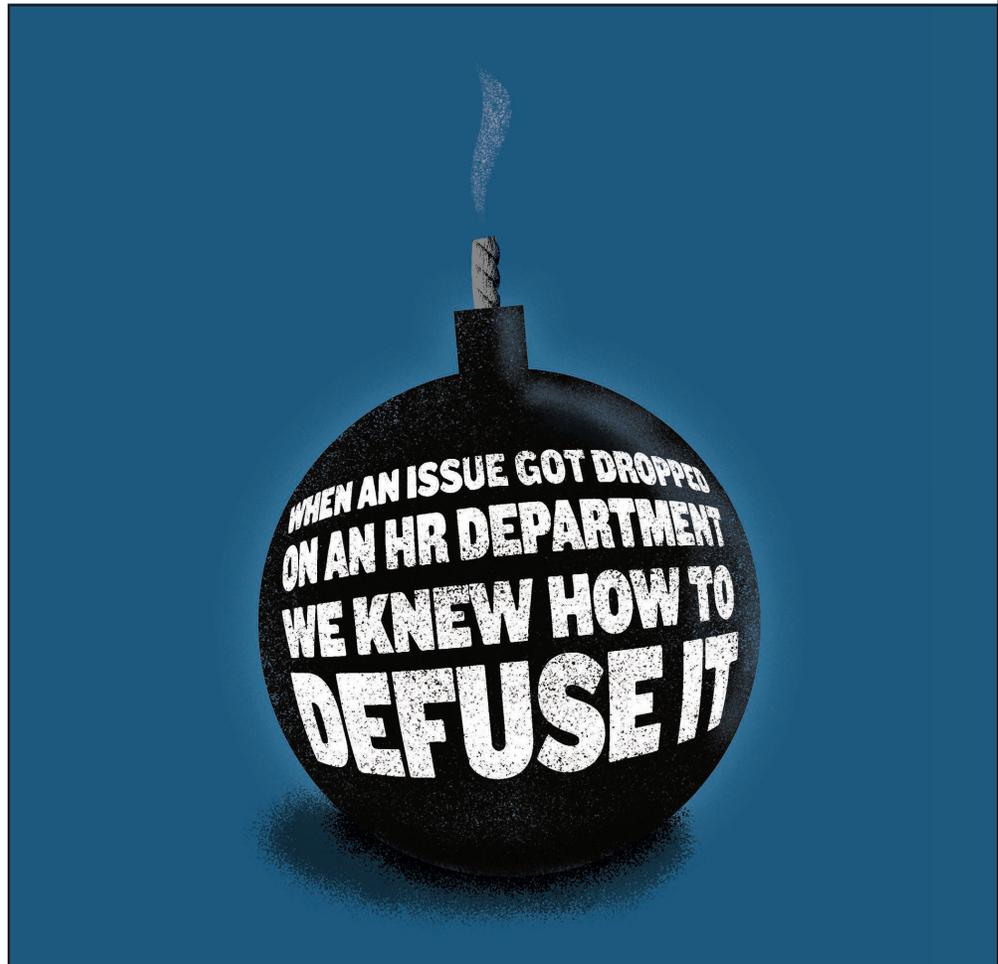
The new sick leave law provides that employees accrue one hour of leave for every 30 hours worked, and that they begin accruing leave as of September 30, 2020, for use starting on January 1, 2021. Alternatively, employers can elect to provide employees with the total amount of annual sick leave they would otherwise be entitled to at the beginning of each calendar year.

Use of Sick Leave

Employees may request sick leave orally or in writing. Employers may set a reasonable minimum increment for the use of sick leave that cannot exceed four hours, and unused sick leave must be carried over to the following calendar year, subject to the following limitations:

- 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.

Unused sick leave does not have to be paid out at the end of employment.



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