



Bill de Blasio  
Mayor

## Department of Consumer Affairs

Julie Menin  
Commissioner

# Paid Sick Leave Frequently Asked Questions

“New Yorkers will finally have legal protection to a basic right that so many of us take for granted each day—and employers will benefit from a stronger and healthier workforce.”

- Mayor Bill de Blasio  
February 26, 2014 Statement about Paid Sick Leave Law

Under New York City’s Earned Sick Time Act (“Paid Sick Leave Law” or “the law”), certain employers must give their employees sick leave, which employees can use for the care and treatment of themselves or a family member. Employers with five or more employees or one or more domestic workers must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

The Department of Consumer Affairs (DCA) prepared Frequently Asked Questions to provide guidance to employers and employees about their responsibilities and rights under the law. DCA will update FAQs as appropriate. Please note the date at the bottom of the sheet. To read the law, go to [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave). Monitor the website for updates and rules.

*NYC’s Paid Sick Leave Law:*

*Together we can keep businesses strong and keep New Yorkers healthy*

## I. GENERAL QUESTIONS

### 1. When do employers have to start complying with the law?

April 1, 2014.

*Exception:* If an employee is subject to a collective bargaining agreement that is in effect on April 1, 2014, the employee becomes covered under the law beginning on the date that the agreement ends.

### 2. Which employers must provide sick leave?

Employers with five or more employees who are hired to work more than 80 hours a calendar year in New York City must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

Employers with one or more domestic workers who have worked for the employer for at least a year and who work more than 80 hours a calendar year must provide paid sick leave.

### 3. Which employers are exempt under the law?

The law does not apply to:

- Government agencies (U.S. government, State of New York, City of New York)
- Federal work study programs
- Employees whose work is compensated by qualified scholarship programs
- Physical therapists, occupational therapists, speech language pathologists, and audiologists who are licensed by the New York State Department of Education
  - These professionals are not covered under the law if they call in for work assignments at will; determine their own work schedule; have the ability to reject or accept any assignment referred to them; and are paid an average hourly wage, which is at least four times the federal minimum wage.
  - The exemption, if applicable, only applies to physical therapists, occupational therapists, speech language pathologists, and audiologists.
- Independent contractors who do not meet the definition of an employee under [New York State Labor Law](#) (Go to [labor.ny.gov](http://labor.ny.gov) and search “Independent Contractors.”)
- Participants in Work Experience Programs (WEP)
- Certain employees subject to a collective bargaining agreement (See FAQs about collective bargaining agreements beginning on page 7.)
- Employees who do not work more than 80 hours in a calendar year

### 4. Are nonprofit employers exempt?

No.

### 5. How is the number of employees determined?

Employers should count all employees who work for pay on a full-time, part-time, or temporary basis. Employees must work more than 80 hours a calendar year to count toward the number of employees.

### 6. What does “calendar year” mean for purposes of the law?

“Calendar Year” means any consecutive 12-month period of time determined by an employer. Most employers will find it helpful to use the “calendar year” that they use for calculating wages and benefits, including a year that runs from January 1 to December 31, tax year, fiscal year, contract year, or the year running from an employee’s anniversary date of employment.

Note: Employers must include their calendar year in the written notice they are required to give employees. See FAQs about “NOTICE TO EMPLOYEES” on page 18.

### 7. What if the number of employees changes every week?

Employers should base their size on the *average* number of employees who worked for pay per week during the prior calendar year. If the average number of employees who worked more than 80 hours in the prior calendar year is five or more, employers must provide paid sick leave.

### 8. What if I am a new employer and the number of employees changes every week?

Employers that have operated for less than one year as of April 1, 2014 should base their size on the *average* number of employees who worked for pay per week during the first 80 days of operation. If the average number of employees who worked more than 80 hours during the first 80 days of operation is five or more, employers must provide paid sick leave.

### **9. If the employer is part of a chain or has multiple locations, do all employees count toward the number of employees?**

If the business owner or principal of the multiple locations owns at least 30 percent of each location and the businesses are engaged in the same business *or* operate under a franchise agreement with the same franchisor as defined under [New York State law](#), then the total number of employees should include employees at all locations in New York City as long as the multiple locations collectively employ at least five employees. Go to [ag.ny.gov](#) and search “Franchisors and Franchisees” for information.

#### **Scenarios:**

**An employer owns at least 30 percent of three pizzerias in New York City. Each location employs four employees. Would this employer be required to provide paid sick leave?**

Yes. The employer should count all 12 employees toward the number of employees.

**An employer owns and operates one fast food restaurant under a franchise agreement. The franchisor owns less than 30 percent of the restaurant. The restaurant employs four people. Would this employer be required to provide paid sick leave?**

No. The employer owns just the one fast food restaurant franchise, which employs less than five employees, and the restaurant is not part of a group of establishments that share a common owner or principal who owns at least 30 percent of each establishment. The employer must provide unpaid sick leave.

### **10. If some employees don't live in New York City, do they count toward the number of employees?**

Yes. The law applies to employees employed for hire within the City of New York for more than 80 hours a calendar year. It does not matter where the employee lives.

### **11. Must an employer based outside of New York City provide sick leave to employees who work in New York City?**

Yes. Employers located outside New York City must provide sick leave to employees who work more than 80 hours per calendar year in New York City. Employers with five or more employees who work more than 80 hours per calendar year in New York City must provide paid sick leave to employees who work in New York City. Employers with one to four employees who work more than 80 hours per calendar year in New York City must provide unpaid sick leave.

### **Scenarios:**

**Sara owns a trucking company in Buffalo. Her drivers make deliveries and pickups in New York City. Are Sara's drivers working in New York City for purposes of the Paid Sick Leave Law?**

Yes. Making deliveries or pickups in New York City is considered to be performing work in New York City. If the drivers do this work for more than 80 hours in a calendar year, Sara must allow them to accrue and use up to 40 hours of sick leave.

**Boss Trucking Company is based in Cleveland. Its drivers drive through New York City without stopping to make deliveries or pickups. Are Boss's drivers working in New York City for purposes of the Paid Sick Leave Law?**

No. Drivers who pass through New York City without stopping to make pickups, deliveries, or otherwise work in New York City are not considered to be working in New York City for purposes of the Paid Sick Leave Law. The law does not apply to employees who do not work in New York City.

### **12. Can two businesses jointly employ one employee?**

Yes. Two or more businesses may be a "joint employer" of an employee under the law. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For example, a temporary agency and the business with which it contracts may be the joint employers of an employee.

### **13. What factors should be considered in determining whether an employer is a "joint employer"?**

Whether a business is a "joint employer" of the employee is based on an assessment of the extent to which the employer exercises formal and functional control over the employee. Factors DCA will consider include but are not limited to whether:

- 1) The business has the power to hire and fire the employee.
- 2) The business supervises and controls the employee's work schedule or conditions of employment.
- 3) The business determines the rate and method of payment.
- 4) The business maintains the employee's employment records.
- 5) The employee uses the business's premises and equipment.
- 6) The employee performs discrete work that is integral to the business's production or work.
- 7) The employee works exclusively or predominantly for the business.
- 8) The business provides training to the employee.

### **14. How should joint employers count the employees they jointly employ?**

Every business that is a joint employer must count each employee jointly employed in determining the number of employees who work for pay. For example, an employer who jointly employs three workers from a temporary help agency and also has three permanent employees has six employees for the purposes of the law and must provide paid sick leave as long as five or more of these employees work more than 80 hours per calendar year in New York City.

### **15. If employers are joint employers, which employer is responsible for compliance with the law?**

Every joint employer is responsible, individually and jointly, for compliance with all provisions of the Paid Sick Leave Law. Example: If a business contracts with a temporary staffing agency to provide temporary employees, both the business and the temporary staffing agency may be considered “joint employers” of the employees under the law and have an obligation to ensure that the law’s requirements are met. The business and the temporary staffing agency may agree between themselves who will be responsible for providing the employees with the notice required under the law and who will be responsible for record keeping responsibilities, but any such assignment of responsibility cannot limit or deny the rights of temporary employees under the law.

### **16. How can employers confirm whether or not the law applies to their business?**

Businesses can contact DCA in the following ways:

- Email [PaidSickLeave@dca.nyc.gov](mailto:PaidSickLeave@dca.nyc.gov)
- Call 311 (212-NEW-YORK outside NYC) and ask for information about Paid Sick Leave
- Online Live Chat, available at [nyc.gov/BusinessToolbox](http://nyc.gov/BusinessToolbox)

Employers should be prepared to provide information about their business so that DCA can provide general guidance about whether the law applies to their business.

## **II. EMPLOYEES COVERED/NOT COVERED BY THE LAW**

### **1. Which employees are covered by the law?**

Most employees who work more than 80 hours a calendar year in New York City are covered by the law. The law covers:

- Full-time employees
- Part-time employees
- Temporary employees
- Transitional jobs program employees
- Undocumented employees
- Employees who are family members but not owners (See FAQ on page 7.)
- Employees who live outside of New York City but work in New York City

## 2. Which employees are *not* covered by the law?

The law does not apply to:

- Employees who work 80 hours or less a calendar year in New York City
- Students in federal work study programs
- Employees whose work is compensated by qualified scholarship programs
- Employees of government agencies
- Physical therapists, occupational therapists, speech language pathologists, and audiologists who are licensed by the New York State Department of Education
  - These professionals are not covered under the law if they call in for work assignments at will; determine their own work schedule; have the ability to reject or accept any assignment referred to them; and are paid an average hourly wage, which is at least four times the federal minimum wage.
  - The exemption, if applicable, only applies to physical therapists, occupational therapists, speech language pathologists, and audiologists.
- Independent contractors who do not meet the definition of an employee under [New York State Labor Law](#) (Go to [labor.ny.gov](#) and search “Independent Contractors.”)
- Participants in Work Experience Programs (WEP)
- Certain employees subject to a collective bargaining agreement (See FAQs about collective bargaining agreements beginning on page 7.)

## 3. Does the law cover domestic workers?

Yes. Under New York State Labor Law, “domestic worker” is defined as:

“a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose. ‘Domestic worker’ does not include any individual (a) working on a casual basis, (b) who is engaged in providing companionship services, as defined in paragraph fifteen of subdivision (a) of section 213 of the fair labor standards act of 1938, and who is employed by an employer or agency other than the family or household using his or her services, or (c) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services under a program funded or administered by federal, state or local government.”

- New York State Labor Law § 2(16)

Domestic workers who have worked for the same employer for at least one year and who work more than 80 hours a calendar year earn two days of paid sick leave under City law. This sick leave is in addition to the three days of paid rest to which domestic workers are entitled under Section 161(1) of the New York State Labor Law.

Go to [labor.ny.gov](#) and search “Labor Law” and “Domestic Workers’ Bill of Rights.” Go to [nyc.gov/PaidSickLeave](#) where DCA will provide guidance specifically for domestic workers.

## 4. Does the law cover employees who are based outside of New York City but work in New York City on an occasional basis?

Only the hours that an employee works in New York City count toward the 80 hours, and the sick leave can only be used when the employee is working in New York City.



## 5. Are independent contractors or consultants covered by the law?

No. The law applies to employees only. Whether someone is an employee or independent contractor depends on several factors. These include how much supervision, direction, and control the employer has over the services being provided.

Example: An employer issues a 1099 tax form to an individual who performs work for the employer. The employer's issuance of a 1099 tax form or description to an individual who performs work for the employer does not determine whether that individual is an independent contractor. Other factors must be considered.

More information is available from the [New York State Department of Labor](http://labor.ny.gov) at **labor.ny.gov**. Search "Independent Contractors."

## 6. Are supervisors and managers covered by the law?

Yes.

## 7. Are owners, partners, shareholders, or board members considered employees?

Whether or not an individual is an employee depends on several factors. According to the New York State Department of Labor and courts considering this issue, factors to consider include whether the individual:

- Has the power to hire and fire employees
- Supervises and controls employee work schedules or conditions of employment
- Determines the rate and method of payment
- Maintains employment records

For further explanation of this issue, visit the New York State Department of Labor [website](http://labor.ny.gov) at **labor.ny.gov**. Search "Legal Updates" and select "Counsel Opinion Letters" from the left navigation. In Search field, enter RO-09-0147.

## 8. Does an employer have to provide sick leave to employees who telecommute?

Employees who telecommute **are covered** by the law for the hours when they are physically working in the City, even if the employer is physically located outside the City.

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

## 9. Are industrial homeworkers covered by the law?

Employees who manufacture industrial goods in their home for an employer **are covered** by the law if they perform their work from a New York City residence, even if the employer is physically located outside the City.

Employees who manufacture industrial goods in their home for an employer **are not covered** by the law if they perform their work from a residence outside of New York City, even if the employer is physically located in the City.

## 10. Are employees covered by current valid collective bargaining agreements covered by the law?

Employees covered by a collective bargaining agreement that is in effect on April 1, 2014 begin to accrue sick leave under City law beginning on the date that the agreement ends.

### **11. What happens to collective bargaining agreements when they technically expire but new ones are being negotiated?**

The Paid Sick Leave Law takes effect on the date an agreement ends. Generally, if the parties agree to extend the agreement during negotiations, then the parties would still be bound by the terms of the collective bargaining agreement.

### **12. What about collective bargaining agreements that go into effect after April 1, 2014?**

The law does not apply to employees covered by collective bargaining agreements if the collective bargaining agreement expressly waives the law's provisions *and* the agreement provides a comparable benefit to employees, such as paid time off.

*Exception:* For employees in the construction or grocery industry covered by a collective bargaining agreement, the law does not apply if the collective bargaining agreement expressly waives the law's provisions. The agreement does not have to provide a comparable benefit to these employees.

### **13. What happens to an employee who had been covered under a collective bargaining agreement that provided comparable benefits if the agreement ends?**

If a collective bargaining agreement ends, any employee covered by the law would be covered from the date that the agreement ends.

## **III. RIGHT TO SICK LEAVE – HOURS, ACCRUAL**

### **1. How much sick leave do employers have to give employees?**

Employers must give employees up to 40 hours of sick leave every calendar year.

*Exception:* An employer must give a domestic worker who has worked for the employer for at least one year two days of paid sick leave in addition to the three days of paid rest to which the domestic worker is entitled under New York State Labor Law. Go to **labor.ny.gov** and search “Domestic Workers’ Bill of Rights.” DCA will provide further guidance on paid sick leave for domestic workers at **nyc.gov/PaidSickLeave**.

### **2. How does sick leave accrual work under the law?**

Employees accrue sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of sick leave per calendar year.

*Exception:* Accruals for domestic workers follow the New York State Labor Law. Go to **labor.ny.gov** and search “Domestic Workers’ Bill of Rights.” A domestic worker is entitled to two days of paid sick leave after working for the same employer for at least one year. DCA will provide guidance on paid sick leave for domestic workers at **nyc.gov/PaidSickLeave**.

### **3. When do employees begin to accrue sick leave?**

Employees begin to accrue sick leave on April 1, 2014 or on their first day of employment, whichever is later. DCA will provide further guidance on how sick leave accrues for domestic workers at **nyc.gov/PaidSickLeave**.

*Exception:* Employees covered by a collective bargaining agreement that is in effect on April 1, 2014 begin to accrue sick leave under City law beginning on the date that the agreement ends.



#### 4. When can an employee start using sick leave?

Employees can start using accrued sick leave on July 30, 2014 or 120 days after the start of employment, whichever is later.

After 120 days, an employee can use sick leave as it is accrued.

Note: Before July 30, 2014, the employee may be entitled to leave under other laws, such as the Family and Medical Leave Act (FMLA), New York State Human Rights Law, New York City Human Rights Law, or as a reasonable accommodation under the Americans with Disabilities Act (ADA). Generally, this leave is not required to be paid.

*Exception:* DCA will provide further guidance when domestic workers can start using sick leave at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

#### 5. What happens to sick leave that an employee has accrued but hasn't used at the end of the calendar year?

Up to 40 hours of unused sick leave can be carried over to the next calendar year. However, employers are only required to allow employees to use up to 40 hours of sick leave per calendar year.

DCA will provide further guidance for domestic workers at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

#### 6. Can an employer pay the employee for unused sick leave instead of allowing the employee to carry it over?

An employer can choose—but is not required—to pay an employee for unused sick leave at the end of the calendar year. Employees cannot carry over sick leave if:

- The employer pays them for the unused sick leave. AND
- The employer provides the employee with an amount of sick leave that meets or exceeds the requirements of the law for the new calendar year on the first day of the new calendar year.

##### Scenario:

**Paulina has accrued 40 hours of sick leave but hasn't used any of it. On the first day of the next calendar year, she gets the flu. Can Paulina use sick leave?**

Paulina can take 40 hours of sick leave right away—her earned hours of sick leave roll over to the new calendar year. But Paulina's employer does not have to let her use more than 40 hours of sick leave in the new calendar year.

#### 7. Can an employee agree with an employer to be paid for sick leave on an as-accrued basis instead of only at the end of the calendar year?

No. The purpose of the law is to ensure that employees can use sick leave for the care and treatment of themselves or a family member. In enacting the law, the City Council determined that providing employees with earned sick leave would have a positive effect on public health and would foster a healthy and productive workforce. Paying employees for unused sick leave before the end of the calendar year could leave employees with no sick leave on days when employees need to use sick leave and would undercut the purpose of the law.

### **8. What is the advantage of carrying over sick leave?**

When unused sick leave is carried over into a new calendar year, an employee is able to use it right away instead of waiting to accrue new sick leave.

### **9. Can an employer have a policy that front-loads 40 hours of sick leave to the beginning of each calendar year to avoid calculating accruals?**

Yes, an employer can have a policy that provides all employees with 40 hours of sick leave at the beginning of each calendar year. However, if the employer has not calculated employees' use and accruals, the employer cannot change the policy in the new calendar year since employees are entitled to carry over unused sick leave and use those hours at the beginning of the new calendar year.

### **10. Can an employer front-load accrual for part-time employees?**

At the beginning of each calendar year, an employer can provide part-time employees with the hours of sick leave they will accrue (based on one hour for every 30 hours the employee is scheduled to work).

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 and use up to 40 hours of sick leave.
- If the employee earns—but does not use—these additional sick leave hours, in the *next* calendar year, the employer must allow the employee to use these hours, as well as the hours the employee accrues based on a part-time schedule.

Reminder: If the employer has not calculated employees' use and accruals, the employer cannot change the policy in the new calendar year since employees are entitled to carry over unused sick leave and use those hours at the beginning of the new calendar year.

### **11. Can an employer have a policy that permits employees to donate unused sick leave to other employees?**

Yes. An employer can have a policy that allows employees to donate unused sick leave to other employees, as long as the policy is voluntary.

### **12. How does sick leave accrue for employees who are exempt from overtime requirements under New York State's Minimum Wage Law or other New York State law?**

If an exempt employee works 40 hours or more in a week, paid sick leave still accrues based on a 40-hour workweek but not beyond the 40 hours. If an exempt employee works less than 40 hours in a week, sick leave accrues based on the employee's normal workweek.

### **13. How does sick leave accrue for employees who are not exempt from overtime requirements under New York State's Minimum Wage Law or other New York State law?**

For employees who are not exempt from the overtime provisions of New York State's Minimum Wage Law or other New York State law, paid sick leave accrues during all hours worked, including overtime hours worked.

**14. Does paid sick leave accrual and carryover need to be based on the “calendar year,” or can employers use other dates, such as the date of hire?**

Accrual and carryover must be based on the calendar year, as determined by the employer, unless the employer has a more generous policy that allows employees to accrue the leave required by the law in less than a calendar year.

**15. Do employees who leave and return (seasonal, rehires, etc.) get to keep their accrued sick leave?**

If the employee is rehired within six months, the employer must reinstate previously accrued sick leave, unless the employer paid the employee for unused sick leave when the employee left and the employee agreed to be paid out.

**16. If an employee is transferred to another division or location of the same employer in New York City, is the employee entitled to sick leave that was accrued at the previous location?**

Yes. The employee gets to keep and can use all previously accrued sick leave.

**17. If an employer sells a covered business to another business, what happens to an employee’s sick leave?**

The employee will retain unused sick leave if the employer sells, transfers, or otherwise assigns the business to another employer and the employee continues to work in New York City. If the new employer has fewer than five employees, the employee must be paid for unused sick leave.

**18. Do employers have to pay unused sick leave to employees who leave the business?**

No. If an employee resigns, retires, is terminated, or is otherwise separated from employment, an employer is not required to pay the employee for unused sick leave.

**19. Can employers give employees more sick leave than the amount required by law?**

Yes. Employers may provide for more generous leave.

## **IV. USE OF SICK LEAVE**

**1. For what reasons can an employee use sick leave?**

Employees can use sick leave for absence from work due to:

- The employee’s 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
- 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
- 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 child care provider is closed due to a public health emergency

## 2. Who is considered a family member under the law?

The law recognizes the following as an employee's family member:

- Child
- Grandchild
- Spouse
- Domestic partner
- Parent
- Grandparent
- Child or parent of an employee's spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)

## 3. Can an employee use sick leave for doctor, dentist, or eye doctor appointments?

Yes.

## 4. Can employees use sick leave for the health care of adult children?

Yes.

## 5. Can parents use sick leave following the birth of their child?

A mother can use sick leave during any period of sickness or disability following the birth of her child. The other parent can use sick leave to care for the mother during this period. Parents also can use sick leave to care for a child's need for medical diagnosis, care, or treatment of an illness, injury, or health condition, or preventive medical care.

Parents cannot use sick leave for "bonding" purposes, which differs from the Family Medical Leave Act ([FMLA](#)), which does permit leave for the purpose of bonding with a newborn or newly adopted child. For more information on FMLA, go to [dol.gov](#) and search "Family & Medical Leave."

## 6. Can an employer require employees to use sick leave in minimum increments?

Yes. The law allows an employer to set *reasonable* minimum increments for the use of sick leave, but the minimum cannot be more than four hours per day unless otherwise permitted by state or federal law.

## 7. If an employee gets sick in the middle of a scheduled vacation, can the employee use sick leave?

No. The employee cannot claim this time as sick leave because the employee was not scheduled to work during the scheduled vacation.

## 8. Can employees use sick leave during overtime that they were required to work?

Yes. An employer must allow an employee to use sick leave for any mandatory hours that an employee was scheduled to work.

## 9. Can an employee work additional hours or swap shifts instead of using sick leave?

Yes, but only with the consent of the employer. An employee can voluntarily agree to work additional hours or swap shifts within the seven days before taking sick leave, if the sick leave was foreseeable, or within the seven days after taking sick leave. An employer cannot require an employee to work additional hours as makeup for sick leave.

*Exception:* An adjunct professor at an institute of higher education may work additional hours at any time during the academic term.

**10. Can an employer require an employee who wants to use sick leave to find a replacement employee for the missed hours?**

No.

**11. Can an employer require an employee to telecommute or work from home instead of taking sick leave?**

No. An employer cannot require an employee to work from home or telecommute instead of taking sick leave. But an employer can offer the employee the options of working from home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees would retain the paid or unpaid sick leave that they have accrued.

**12. Can an employer require employees to provide advance notice of the need to use sick leave?**

If the need is foreseeable, the employer can require up to seven days advance notice of an employee's intention to use sick leave. If the need is unforeseeable, the employer may require an employee to give notice as soon as practicable. Whether and when an employee can practicably provide notice depends upon the individual facts and circumstances of the situation.

**Scenario:**

**An employee schedules a doctor's appointment a week ahead of time, but forgets to let the employer know about it until a day in advance. The employer's policy requires seven days advance notice for foreseeable absences. Can the employer deny use of paid sick leave because the absence was foreseeable and the employee did not provide adequate notice?**

Yes. An employer can require employees to comply with notice policies and procedures if the absence is foreseeable and if notice is reasonable. If an employee does not comply with notice policies and there is no evidence of retaliation by the employer, an employer can deny use of sick leave.

**13. Can an employer require an employee to disclose the medical reason for using sick leave?**

No. An employer cannot require an employee or an employee's health care provider to disclose details of the employee's or employee's family member's injury, illness, or condition that required the use of sick leave, except as required by law.

**14. Can an employer require an employee to provide documentation from a licensed health care provider?**

Yes, but only if the employee uses more than three consecutive workdays as sick leave. The employer can require the employee to provide a note from a licensed health care provider confirming the need for the amount of sick leave taken. The law prohibits employers from requiring the health care provider to specify the medical reason for sick leave. Disclosure may be required by other laws. See VII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME on page 17.

If an employer requires an employee to provide documentation when the employee uses or plans to use sick leave in excess of three days, the employee is responsible for the cost not covered by insurance or any other benefit plan.

**15. Can an employer require documentation if the sick leave is not for more than three full days?**

An employer can require documentation if the employee uses more than three consecutive workdays as sick leave. A workday does not need to be a “full” day if the employee works part time.

**Scenario:**

**Bill’s work schedule is three hours on Monday, Tuesday, Wednesday, and Friday. He uses sick leave for these four days. Can his employer require documentation?**

Yes. Bill used sick leave for four consecutive workdays. His employer can require documentation from a licensed health care professional.

**16. Can an employer require the employee to provide written confirmation that the employee used sick leave under the law?**

Yes. However, the employer cannot require the employee to provide documentation from a medical provider if the employee has not used sick leave for more than three consecutive workdays.

**17. Can the employer require a second opinion to verify that the documentation is valid?**

No. If the employee provides documentation from a licensed health care provider, the employer cannot require a second opinion.

**18. Does an employer have to keep medical information about employees confidential?**

Yes. An employer must keep health information about an employee or an employee’s family member obtained solely because of this law confidential unless the employee permits disclosure or disclosure is required by law.

**19. Can an employer discipline an employee who misuses sick leave?**

Yes, but only if an employee uses sick leave for a purpose other than those set forth in the law.

**20. What are possible signs of misuse of sick leave?**

Indications of using sick leave for purposes other than those described in the law include, but are not limited to:

- Repeated use of unscheduled sick leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation, or pay day
- Taking leave on days when other leave has been denied
- A pattern of taking leave on days when the employee is scheduled to work a shift or perform duties perceived as undesirable.

Evidence that an employee engaged in an activity that is not consistent with the employee being sick or with the employee using sick leave for a preventative medical appointment may also indicate misuse of sick leave.



## **V. RATE OF PAY FOR SICK LEAVE**

### **1. How much does an employer have to pay an employee for paid sick leave?**

When an employee uses paid sick leave, an employer must pay the employee the employee's regular hourly rate at the time the sick leave is taken. Employees cannot be paid less than the *full* minimum hourly wage provided for under [Section 652\(l\)](#) of the New York State Labor Law. As of December 31, 2013, the New York State minimum wage is \$8 per hour. It will increase to \$8.75 per hour on December 31, 2014 and to \$9 per hour on December 31, 2015. For updates and other information on the minimum wage, go to **labor.ny.gov** and search "Minimum Wages."

### **2. If an employee uses sick leave during hours that would have been overtime if worked, does the employer have to pay the overtime rate of pay?**

No. Employers are not required to pay the overtime rate of pay.

### **3. How much does an employer have to pay an employee for paid sick leave if the employee's salary is based on tips or gratuity?**

The employer must pay the employee at least the full minimum wage, which is \$8 an hour as of December 31, 2013.

### **4. Are employees entitled to tips that would have been earned during sick leave?**

Employees are not entitled to lost tips during use of sick leave if their regular rate of pay is greater than \$8 per hour.

### **5. Does the employer have to consider the employee's bonus in calculating the employee's rate of pay for paid sick leave?**

No. If the amount of a bonus is wholly within the discretion of the employer, then the employer does not need to count the bonus in determining the employee's rate of pay for paid sick leave purposes.

### **6. If an employee has two different jobs for the same employer or the employee's rate of pay fluctuates for the same job, what should the rate of pay be for sick leave?**

The rate of pay should be what the rate of pay would have been during the time that the employee used the sick leave.

### **7. An employee volunteers to work hours in addition to a normal schedule at a pay rate higher than the employee's regular hourly wage. If the employee uses sick leave during these additional voluntary hours, how much should the employee be paid?**

Under the law, employees who volunteer to work hours in addition to their normal schedule would be paid at their normal pay rate if they take sick leave.

## **VI. OTHER TIME OFF POLICIES**

### **1. Can other time off policies satisfy the requirements of the law?**

Yes, as long as the time off meets or exceeds the requirements of the law and can be used for the purposes of sick leave. 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 sick leave if the vacation or personal leave days can be used for sick leave and the employer's policies meet the other requirements of the law.

### Scenario:

**Laces Shoe Store provides its employees with 40 hours of paid vacation time but no sick leave. Do they need to provide sick leave?**

No. Laces Shoe Store does not need to provide sick leave in addition to the 40 hours of paid vacation that they already provide employees, but the store must allow employees to use the vacation time as they would sick leave under the law and otherwise must comply with the law's requirements.

## 2. When will an employer's time off policy meet or exceed the requirements of the law?

A policy will meet or exceed the law's requirements and be permissible under the law if the policy **at a minimum:**

- Provides that leave can be taken as *paid* sick leave if the employer has five or more employees who work more than 80 hours a calendar year in New York City and provides *unpaid* sick leave if the employer has one to four employees who work more than 80 hours a calendar year in New York City.
- Allows employees to accrue at least one hour of sick leave for every 30 hours worked or provides full-time employees with 40 hours of sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of sick leave at the beginning of the calendar year based on a rate of at least one hour of sick leave for every 30 hours worked.
- Allows employees to use up to 40 hours of accrued sick leave in a calendar year.
- Permits accrued sick leave to be used during a "calendar year," which is a consecutive 12-month period of the employer's choosing.
- Permits employees to use up to 40 hours of accrued sick leave for the same reasons and under the same conditions that sick leave can be used under the law. For example, the policy must permit employees to use leave to take care of "family members" as defined under the law (child, spouse, domestic partner, parent, parent of a spouse or domestic partner, grandchild, grandparent, or sibling).
- Does not impose limitations, conditions, or requirements on the use of sick leave beyond those in the law. For example, an employer cannot require unreasonable notice for the use of sick leave or require an employee to take leave in minimum increments of more than four hours.
- Permits employees to carry over up to 40 hours of unused sick leave to the next calendar year unless the employer provides full-time employees with 40 hours of sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of sick leave at the beginning of the calendar year based on a rate of at least one hour of sick leave for every 30 hours worked.
- Provides that employees are paid at least their regular hourly rate but no less than \$8 per hour (minimum wage).
- Allows an employee to use sick leave without retaliation, such as threats, discipline, demotion, reduction in hours, or termination, and does not prohibit the employee from filing a complaint with DCA.

**3. If an employer provides employees with time off that meets or exceeds the requirements of the law, must the employer maintain records?**

Yes. Employers are required to maintain records to demonstrate compliance with the law. For example, an employer should maintain a copy of its leave policy and payroll or other records that show employees' sick leave use and accrual. In addition, DCA recommends that all employers maintain signed copies of the Notice of Employee Rights or receipts that demonstrate that the employer gave employees the required notice.

**4. An employer has a sick leave policy in effect prior to April 1, 2014 that meets or exceeds the law's requirements. Its employees' calendar year began prior to April 1, 2014. Must the employer provide sick leave to an employee who used all sick leave prior to April 1, 2014?**

No. The employer would not be required to provide that employee with more sick leave until the next calendar year. Note: The employer must give employees the required Notice of Employee Rights created by DCA that states the employer's calendar year in the notice. The employer cannot change the terms or conditions of the policy during the current calendar year.

## **VII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME**

**1. What about overlapping jurisdiction between federal and state laws—which would take precedent?**

Federal and state laws, such as the Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), or the New York State Human Rights Law take precedent when they require employers to do more than the City's Paid Sick Leave Law.

For example, depending on the facts in a particular situation, under the FMLA, an employer may be required to provide intermittent time off in increments of time less than four hours.

As another example, depending on the facts in a particular situation, under the ADA or the New York State Human Rights Law, an employer may be required to provide an employee with a disability a leave of absence that is longer than the amount of sick leave an employer must allow under the Paid Sick Leave Law.

In addition, when an employer is asked to provide leave under federal or state law that goes beyond what the employee is entitled to under the Paid Sick Leave Law, the employer may be able to ask the employee to provide more information about a medical condition or disability than the employee would be required to provide under the Paid Sick Leave Law.

Note: It will often be the case that an employer can meet the requirements of both federal law and the City's Paid Sick Leave Law at the same time by allowing time off with pay. Moreover, leave an employer provides under the Paid Sick Leave Law would generally count toward meeting obligations under federal and state law, even though additional leave may be required under those laws.

**2. Is leave under the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and the State Human Rights law paid leave?**

No. These federal and state laws do not require employers to give time off with pay.

### **3. What are some of the other differences between the Family Medical Leave Act (FMLA) and the Paid Sick Leave Law?**

The FMLA provides qualified employees with 12 weeks of job-protected unpaid leave for specific purposes. The FMLA only applies to employers that meet certain criteria and only eligible employees are entitled to take FMLA leave. For more information concerning the FMLA, visit the U.S. Department of Labor website at <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

### **4. Can an employee's use of sick leave be counted toward leave under other laws?**

Yes. An employee's use of sick leave may be counted toward concurrent leave under federal or state law, such as the FMLA.

## **VIII. RETALIATION**

### **1. Can an employer retaliate against an employee for using sick leave?**

No. Retaliation is illegal. An employer cannot retaliate against an employee for exercising or attempting to exercise rights under the law, including: requesting and using sick leave; filing a complaint for alleged violations of the law with DCA; communicating with any person, including coworkers, about any violation of the law; participating in an administrative or judicial action regarding an alleged violation of the law; or informing another person of that person's potential rights.

### **2. What constitutes retaliation?**

Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under the law.

### **3. Does the law protect an employee from retaliation if the employee mistakenly, but in good faith, alleges a violation?**

Yes.

## **IX. NOTICE TO EMPLOYEES**

### **1. Are employers required to give employees notice of their right to sick leave?**

Yes. Employers must give the Notice of Employee Rights created by DCA to new employees when they begin employment and to existing employees by May 1, 2014. The written notice includes:

- Accrual and use of sick leave
- Employer's calendar year
- Right to be free from retaliation
- Right to file a complaint

Notices are available in English, Spanish, Chinese, French-Creole, Italian, Korean, and Russian at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

On the notice, DCA encourages employees to keep a copy of the notice and all documents that show amount of sick leave and sick leave accrual and use.

## 2. In what language must the employer provide the notice?

An employer must provide the employee with the notice in English and, if available on the DCA website, the employee's primary language.

## 3. How should the employer provide the notice to employees?

The employer may use a delivery method that reasonably ensures that employees receive the notice. For example, an employer may provide the notice to each employee personally or by regular mail or by email or deliver the notice to the employee by including it in new hire materials if the employer gives those materials directly to the employee. **An employer cannot post the notice instead of providing the notice to employees.**

## 4. Should an employer save a signed copy of the notice or an email receipt for the notice?

Yes. While the law does not require employers to keep or maintain a copy of the notice signed by employees or a receipt, employers must maintain records documenting their compliance with the law. Saving signed copies of the notice or email receipts are good ways to document that employers gave employees the required notice.

## 5. Does the notice have to be posted in the workplace?

No. Employers are encouraged—but not required—to post the notice in the workplace in an area accessible to employees. An employer cannot post the notice instead of providing the notice to the employee.

## 6. Must an employer with sick leave policies that meet or exceed the requirements in the law give the required Notice of Employee Rights to employees?

Yes. An employer must give employees the Notice of Employee Rights created by DCA and available at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave) so that employees are aware of their minimum rights under the Paid Sick Leave Law. The notice states:

Note: The Earned Sick Time Act sets the minimum requirements for sick leave. Your employer's leave policies may already meet or exceed the requirements of the law.

In addition to the required notice, an employer can provide employees with a copy of the employer's policy, but the employer should not amend or modify the required notice beyond filling in the employer's calendar year where indicated.

See VI. OTHER TIME OFF POLICIES on page 15.

## X. EMPLOYER RECORD KEEPING

### 1. What records does an employer have to keep?

Employers must keep and maintain records documenting their compliance with the law for at least three years, unless otherwise required by any law, rule, or regulation. Employers must make the records available to DCA upon notice and at an agreed upon time of day.

The employer must keep health information obtained solely for the purpose of the employee using sick leave confidential unless disclosed by the employee or required by law.

## **2. Can an employer maintain electronic records?**

Yes. An employer can keep electronic records as long as the employer is able to produce the records in a manner in which they can be readily inspected or examined and as long as health information obtained solely for the purpose of the employee using sick leave is kept confidential unless disclosed by the employee or the disclosure is required by law.

## **3. Are the record keeping requirements of the Paid Sick Leave Law the same as those of the Equal Employment Opportunity Commission (EEOC) or Internal Revenue Service (IRS)?**

The Paid Sick Leave Law requires employers to maintain records documenting compliance with the law for three years. Employers must continue to comply with other relevant laws and rules that govern their record keeping. For example, employers must comply with relevant IRS and EEOC record keeping requirements. For more information about these requirements, visit [www.eeoc.gov](http://www.eeoc.gov) (EEOC website) and [www.irs.gov/Businesses](http://www.irs.gov/Businesses) (IRS website).

# **XI. ENFORCEMENT**

## **1. Who enforces the law?**

DCA enforces the law. However, the Mayor can designate another agency to enforce the law.

# **XII. COMPLAINTS**

## **1. Can employees file a complaint?**

Yes. Employees can file complaints with DCA. The complaint form is available online at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave) or by contacting 311 (212-NEW-YORK outside NYC).

The Mayor can designate another agency to handle complaints.

## **2. How long does an employee have to file a complaint?**

Employees have two years from the date that they knew or should have known of the violation to file a complaint.

## **3. Must the employer respond to the complaint?**

Yes. If an employee files a complaint with DCA, DCA will contact the employer by mail for a written response. The employer must respond to DCA within 30 days and provide the information DCA requests.

## **4. What will DCA do with complaints?**

DCA will conduct a fair investigation of the complaint and will work with the employer and the employee to resolve the complaint through mediation. DCA will also work with the employer to come into compliance with the law.

## **5. Will DCA keep an employee's identity confidential?**

Yes. DCA will keep the identity of the employee confidential unless disclosure is necessary to conduct the investigation, mediate the complaint, or is required by law.



## **6. How will DCA ensure compliance?**

DCA anticipates ensuring compliance through outreach and education and resolving noncompliance through mediation.

If an employer receives a notice of violation, the employer has the opportunity to settle the violation without a hearing or to appear before an impartial judge at DCA's Adjudication Tribunal. The judge will hear testimony from DCA, the employer, and any witnesses. Under the law, the judge may order an employer to provide an employee whose rights have been violated with the following:

- Three times the wages that should have been paid for each time the employee took sick leave but wasn't paid or \$250, whichever is greater
- \$500 for each time the employee was unlawfully denied sick leave requested by the employee or was required to find a replacement worker, or each time the employee was required to work additional hours to make up for sick leave taken without mutual consent of the employer and the employee
- Full compensation, including lost wages and benefits, \$500 and appropriate equitable relief for each time the employer retaliated against the employee for taking sick leave (not including termination)
- Full compensation, including lost wages and benefits, \$2,500 and appropriate equitable relief (including reinstatement) for each time the employer fires an employee for taking sick leave

## **7. What are the maximum penalties under the law?**

In addition to the relief that an employer may be required to provide employees whose rights have been violated (see previous FAQ), the law also outlines the following maximum civil penalties that may be imposed against employers for violations of the law:

- \$500 for the first violation
- Up to \$750 for a second violation within two years of a prior violation
- Up to \$1,000 for subsequent violations that occur within two years of any previous violation
- Up to \$50 for each employee who was not given the required Notice of Employee Rights

## **8. Will businesses with fewer than 20 employees be subject to penalties for violations starting on April 1, 2014?**

No. Employers with fewer than 20 employees will not be subject to penalties for violations that occur before October 1, 2014. However, employers of all sizes may be required to provide to employees whose rights have been violated any other remedies authorized by law, such as lost wages and benefits and equitable relief, for violations that occur before October 1, 2014.

## **9. If a business with fewer than 20 employees receives a violation before October 1, 2014, will it count as a first violation for the purpose of assessing penalties that occur after October 1, 2014?**

The first violation that an employer with fewer than 20 employees receives before October 1, 2014 will not count toward the calculation of penalties for violations that the employer might receive after October 1, 2014. But if an employer commits a second violation of the same offense before October 1, 2014, that second violation will count toward the calculation of penalties if a subsequent violation of the same offense is committed after October 1, 2014.

#### **10. Will manufacturers be subject to penalties for violations starting April 1, 2014?**

No. Manufacturers that are listed in sectors 31, 32, or 33 of the [U.S. Department of Labor](#) North American Industry Classification System (NAICS) will not be subject to penalties for violations that occur before October 1, 2014. However, manufacturers may be required to provide to employees whose rights have been violated any other remedies authorized by law, such as lost wages and benefits and equitable relief, for violations that occur before October 1, 2014.

Examples of manufacturing companies include:

- Retail and Commercial Bakeries
- Numerous Types of Food Manufacturers
- Numerous Types of Textile Product Mills
- Numerous Types of Apparel Manufacturers
- Numerous Types of Plastic Products Manufacturers
- Commercial Printing Establishments
- Pharmaceutical Preparation Manufacturers
- Wood Kitchen Cabinet and Countertop Manufacturers
- Dental Manufacturing Laboratories

For the full list, go to [http://www.bls.gov/oes/current/naics2\\_31-33.htm](http://www.bls.gov/oes/current/naics2_31-33.htm)

#### **11. If a manufacturer receives a violation before October 1, 2014, will it count as a first violation for the purpose of assessing penalties that occur after October 1, 2014?**

The first violation that a manufacturer receives before October 1, 2014 will not count toward the calculation of penalties for violations that the employer might receive after October 1, 2014. But if the employer commits a second violation of the same offense before October 1, 2014, that second violation will count toward the calculation of penalties if a subsequent violation of the same offense is committed after October 1, 2014.

#### **12. Does the law authorize employees to bring an action in court to enforce their rights?**

No. The law does not give employees the right to initiate actions in court to enforce their rights under the Earned Sick Time Act. However, employees retain any other rights they may have under other local, state, or federal laws.

### **XIII. RULES**

#### **1. Are there rules or regulations implementing the law?**

DCA published proposed rules, which are available at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

#### **2. What do the proposed rules cover?**

The proposed rules clarify provisions in the Earned Sick Time Act, establish requirements to implement the Act and meet its goals, and provide guidance to covered employers and protected employees. Specifically, these rules:

- Provide a methodology for new employers to calculate the number of their employees.
- Address situations where employees are employed by more than one employer, who, as “joint employers,” are jointly and individually liable for ensuring compliance with the Earned Sick Time Act.
- Confirm that the Earned Sick Time Act applies to employees irrespective of immigration status.
- Explain what may constitute a “reasonable” minimum amount of leave that an employer may require for the use of sick leave.
- Establish requirements for employer policies that require employees to provide “reasonable notice” before using sick leave.
- Clarify that an employer may require an employee to provide written documentation of the need for sick leave from a licensed health care provider if the employee is absent for more than three consecutive “work days” and define “work day” in this context.
- Address accrual of sick leave for domestic workers.
- Address the rate of pay of paid sick leave for certain employees.
- Provide that employees must be paid for sick leave no later than the payday for the next regular payroll period after the sick leave was used by the employee, unless the employer has asked for written documentation or verification of the need for sick leave, in which case the employer is not required to pay sick leave until the employee provides it.
- Address what happens to accrued sick leave after an employer sells, transfers, or otherwise assigns its business to another employer and the employee continues to work for that business.
- Establish requirements relating to the distribution or posting of an employer’s sick leave policies.
- Clarify the requirements in the Earned Sick Time Act relating to DCA access to employer records and define “appropriate notice” of the need for such access by DCA.
- Describe the circumstances in which DCA will issue a Notice of Violation to an employer.
- Establish a cure period for certain violations of the Earned Sick Time Act relating to the failure to respond to a complaint or provide records.
- Describe the circumstances in which DCA may conduct an investigation of an employer’s employment practices on its own initiative.

### 3. How do I comment on the proposed rules?

You can comment on the proposed rules in one of the following ways:

- **Online.** Submit comments to DCA through the NYC Rules website at <http://rules.cityofnewyork.us>
- **Email.** Email written comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov)
- **Mail.** Mail written comments to Ricky Wong, Assistant Commissioner for Community and Government Relations, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** Fax written comments to (646) 500-5962.
- **Speak at the Hearing.** You must sign up to speak. You can sign up before the hearing by calling (212) 436-0186. You can also sign up in the hearing room before the hearing begins on April 29, 2014. You can speak for up to three minutes.

**Written comments may be submitted on or before 5 p.m. on April 29, 2014.**

#### Questions? Want to attend a training to understand the law?

Contact DCA in the following ways:

- Email [PaidSickLeave@dca.nyc.gov](mailto:PaidSickLeave@dca.nyc.gov)
- Call 311 (212-NEW-YORK outside NYC) and ask for information about Paid Sick Leave
- Online Live Chat, available at [nyc.gov/BusinessToolbox](http://nyc.gov/BusinessToolbox)