

September 30, 2020

## **CLIENT ALERT – NEW YORK PAID SICK LEAVE UPDATE**

Dear Clients and Friends:

Fall is here, and it is time for us to resume our updates and client education events. To that end, we want to start by alerting you to the New York Paid Sick Leave law set to go into effect this week as well as a reminder for anti-harassment training and another for our upcoming Labor and Employment Law Update.

### **NEW YORK PAID SICK LEAVE**

New York State has enacted a Paid Sick Leave Law that applies to all employers regardless of size. The accruals for employees under the new law begin on September 30, 2020, and employees may begin taking leave on January 1, 2021. The New York State Department of Labor has not issued any additional guidance or regulations at this time. If they do so, we will provide an update.

### **Required Time Accrual and Availability**

For Employers, with 1-4 employees and a net income of \$1 million or less per year, the Employer must provide 40 hours of unpaid sick leave per calendar year.

For Employers with 1-4 employees and a net income greater than \$1 million per year, and for employers with 5-99 employees, the employee will earn up to 40 hours of paid sick leave per year.

For Employers with 100 or more employees, the employee will earn up to 56 hours of paid sick leave per year.

The Employer may choose to have employees earn sick leave at a rate of 1 hour of sick leave for every 30 hours of work, or may choose to provide 100% of the sick leave on January 1 of each year. If the employer chooses to provide the leave up front, the employer may not reduce the leave during the year (for instance if an employee drops to per diem or part time work).

All employees (full-time, part-time, per diem, or other) are eligible for leave under the law.

### **Required Use of Paid Sick Leave**

Employers may set minimum increments of time for sick leave use, but that minimum increment may not exceed 4 hours of time. Thus, for example, an employer could allow employees to take one hour at a time, but could not require employees to take paid sick leave in full day increments.

Paid sick leave may be taken for any of the following reasons:

- 1) for a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;

#### **Contact**

80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 723-5341  
Fax: (607) 723-6605  
Email: [tconlon@hhk.com](mailto:tconlon@hhk.com)  
[jfish@hhk.com](mailto:jfish@hhk.com)  
[dlanouette@hhk.com](mailto:dlanouette@hhk.com)

- 2) for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or
- 3) for an absence from work due to various issues related to domestic violence which are spelled out in detail in the statute.

"Family member" includes 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" includes 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" includes a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

### **Required Carryover**

Employees may carry over the paid sick leave from one year to the next, but can only use a maximum amount each year.

For Employers with fewer than 100 employees, the employee may use up to 40 hours of paid (or unpaid) sick leave per year.

For Employers with 100 or more employees, the employee may use up to 56 hours of paid sick leave per year.

Paid sick leave does not need to be paid out on termination of employment.

### **Amount Paid for Paid Sick Leave**

Employees must be paid at their regular rate or the state minimum wage whichever is greater. Paid sick leave does not count toward hours worked for overtime purposes.

### **Existing Employer Plans**

To the extent an employer already provides paid sick leave or a combined paid time off benefit to employees, the employer may keep that plan in place of the statutory sick leave **if and only if** the provisions of the plan are at least as generous as the statute for the following areas:

1. Time accrued and available
2. Reasons for and use of time accrued
3. Carryover from year to year

### **Next Steps**

Employers with no existing sick leave must work with their payroll providers to comply with the statute.

Employers with existing plans need to evaluate their paid sick leave or paid time off programs to determine if they meet the minimum standards of the statute. Employers should work with counsel to modify their plans as needed.

Unionized employers need to evaluate whether their sick leave benefits under their Collective Bargaining Agreements (CBA) are at least as generous as the statute. In some cases, the CBA may provide for other or different benefits than under the statute. The statute provides that an employer and union may negotiate for other or different benefits provided that the CBA specifically acknowledges this fact. Unionized employers are encouraged to work with counsel to include appropriate language in the CBAs.

### **ANNUAL ANTI-HARASSMENT TRAINING**

Employers should remember that annual anti-harassment training is still due by December 31 of this year. Employers who are using an older program should be aware that the definition of harassment in New York has changed. As of January 1, 2020, harassment includes any conduct which is more than a “trivial slight or petty inconvenience”. This replaces the severe and pervasive standard in New York. If you need options for anti-harassment training for your employees and/or supervisors, please contact us to discuss.

### **LABOR AND EMPLOYMENT LAW UPDATE—OCTOBER 21**

Finally, we want to remind you to mark your calendars for October 21, 2020 in the morning for the annual Greater Binghamton Chamber of Commerce Labor and Employment Law Update presented by Hinman, Howard and Kattell, LLP. While we cannot be together this year, we look forward to presenting virtually on all of the latest labor and employment law updates including: Worker’s Compensation, Benefits Updates, Wage and Hour Updates, Paid Sick Leave, Politics in the Workplace, Covid-19 issues and more.

Details, including registration will follow on the Chamber’s website.

As always, if you have any questions, please do not hesitate to contact us.



**Thomas A. Conlon**  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6744  
Email: [tconlon@hhk.com](mailto:tconlon@hhk.com)



**John C. Fish**  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6712  
Email: [jfish@hhk.com](mailto:jfish@hhk.com)



**Dawn J. Lanouette**  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6917  
Email: [dlanouette@hhk.com](mailto:dlanouette@hhk.com)

*Copyright © 2020 by Hinman, Howard & Kattell LLP. This Client Alert is provided as a general information service to clients and friends of Hinman, Howard & Kattell, LLP. It should not be construed as, and does not constitute legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered Attorney Advertising in some states.*