



LUNCH WITH A LAWYER

**LEGAL BASICS:
PAID SICK LEAVE
AND PAID COVID LEAVE**

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PAID SICK LEAVE

[HTTPS://WWW.NY.GOV/SITES/DEFAULT/FILES/ATOMS/FILES/PSL_FAQ_PAID_SICKLEAVEFAQ.PDF](https://www.ny.gov/sites/default/files/atoms/files/psl_faq_paid_sick_leave_faq.pdf)

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WHAT BUSINESSES ARE COVERED?



- 4 or fewer employees and under \$1 million net—40 hours unpaid
- 4 or fewer and net income of \$1 million or more—40 hours paid
- 5-99—40 hours paid
- 100 and up—56 hours paid



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TRICKY ISSUES



- Do Seasonal Employees Count?
 - YES they both count toward the total number of employees AND are eligible for paid sick leave
- Do Out of State Employees Count?
 - YES for determining coverage, BUT they don't get leave



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HOW DOES IT GET MEASURED?


- Accrues at a rate of 1 hr. for every 30 hours worked
- Only hours worked count—not PTO, FMLA, or other leaves
- Employer can set minimum increments (not greater than 4 hrs.)
- Paid at regular rate or min wage—whichever is **greater**



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WHAT ABOUT FRONT LOAD/CARRYOVER

- Can Front load the sick leave but cannot reduce it if you do this
- Employee can carryover all unused BUT can only use the max each year
- Employers cannot cap the number of accrued but unused sick leave hours that employees can carry over from one calendar year into the next, even when an employer frontloads sick leave
- Can give employees the choice to be paid out for their accrued unused sick leave

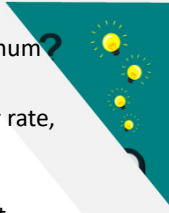


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TRICKY PAY ISSUES

- Tipped Workers-normal rate or minimum wage. NO tip credit
- Using leave during overtime—regular rate, not overtime rate
- Seasonal Employees who are likely to come back—maintain their leave next season

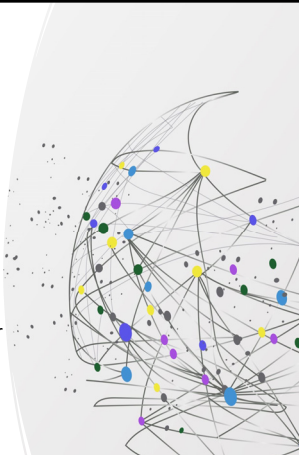


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WHO DOES IT APPLY TO?

- Self
- Spouse/partner
- Parent/parent of spouse or partner
- Child/child of spouse or partner
- Sibling
- Grandchild
- Grandparent



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Covered Reasons for Sick Leave

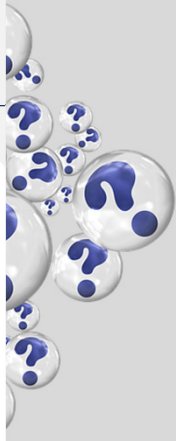
- The need for diagnosis, care, or treatment of a mental or physical illness or preventative care of the employee or the employee's family member; and
- Certain needs related to the employee or the employee's family member being the victim of domestic violence, sexual offenses, stalking, or human trafficking



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PRACTICE QUESTIONS

- An employee requests half day of leave to take a child to the dentist. Does this qualify?
 - YES.
- An employee requests leave because their aunt who raised them passed away. Does this qualify?
 - MAYBE—Not for Bereavement BUT maybe for mental health



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PROTECTION FOR EMPLOYEES


- Cannot Delay an Employee Taking Leave
 - Employees Can Use Leave During any Probationary Period
- Requires Restoration to their Position
 - Note: This is Different from FMLA
- Prohibits Retaliation for Taking Leave or Requesting Leave



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REQUIRE PSL USE?

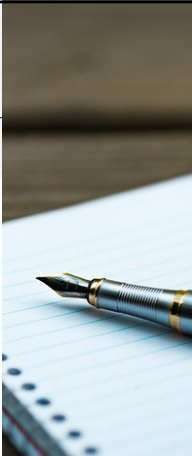
- Can employers **require** employees to take PSL when absent from work for a covered reason?
 - No BUT you can have other policies that could curb excessive absences



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REQUIRE NOTICE?

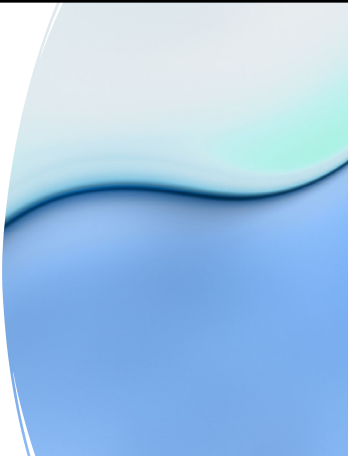
- Can an employer require an employee to give advanced notice of a foreseeable reason for leave (like an appointment)?
 - No. But you can ask



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REQUIRE COVERAGE?


- Can you require employee to get coverage for the leave?
 - NO



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REQUIRE DOCUMENTATION?

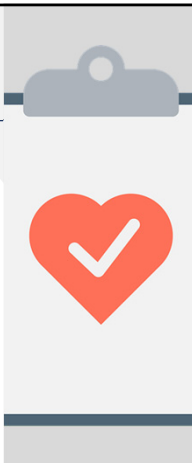
- Can an employer require documentation of leave?
 - YES, BUT
 - Cannot require information identifying the reason for the absences
 - Cannot require for absence of less than 3 days
 - Employer must pay for any cost
 - It's very limited



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WHAT CAN YOU GET?


- (1) An attestation from a licensed medical provider supporting the existence of a need for sick leave, the amount of leave needed, and a date that the employee may return to work, or
- (2) An attestation from an employee of their eligibility to leave.



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WHAT ABOUT REMOTE EMPLOYEES?

- Applies ONLY for hours worked while in New York regardless of where the employer is located



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WHAT ABOUT EXISTING PTO PLANS?

If an employer, including those covered by a collective bargaining agreement, has an existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carryover, and use requirements, this law does not present any further obligations on that employer.

<https://www.ny.gov/new-york-paid-sick-leave/new-york-paid-sick-leave#:~:text=Existing%20Policies-Existing%20Policies,further%20obligations%20on%20that%20employer.>



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EXISTING PLANS ARE HARD

- Carryover v. Use
- Tracking
- Notice Requirements and Right of Refusal



Decision Time: Separate Bank or Stick with the PTO?




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WHAT ABOUT ABUSE?

Hard to Prove

BUT, you can discipline for abuse

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WHAT TO DO NOW?

- Review the FAQ and Fact Sheet
<https://www.ny.gov/new-york-paid-sick-leave/new-york-paid-sick-leave#:~:text=Existing%20Policies-Existing%20Policies,further%20obligations%20on%20that%20e mployer.>
- Have a Written Policy
 - Address Payout
 - Address Accrual
 - Address Other Leaves

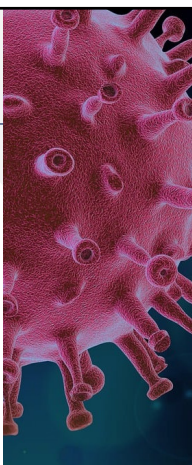
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COVID LEAVE IS NOT OVER

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LAW REQUIREMENTS

- Only during period of required isolation or quarantine
<https://www.cdc.gov/coronavirus/2019-ncov/your-health/isolation.html>
- Size of employer determines max amount of leave
 - 1-10 depends on income
 - 11-99 at least 5
 - Above 99 at least 14
- Leave Is Job protected
<https://paidfamilyleave.ny.gov/COVID19>

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WHAT ELSE SHOULD I KNOW?

- Can Require an Affirmation of isolation
https://coronavirus.health.ny.gov/system/files/documents/2022/09/ct_affirmationofisolation_fillin_091322.pdf
- Up to 3 times (2nd and 3rd time can require positive test)



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REMEMBER . . .

- Cannot require employee to use New York Paid Sick Leave or PTO instead of available quarantine leave




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UPCOMING LUNCH WITH A LAWYER

- May 16—Basics: Paid Family Leave
- Available on-line: *Top 10 Wage and Hour Mistakes*
<https://www.hhk.com/lw-webinar-2023-09-top10mistakes-wage/>
Many others on-line too!



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**UPCOMING
WEBINAR ON AI**

- Southern Tier Association for Human Resources
- Webinar March 7 @ 12-1
- Free for Members; \$10 for non-members
- More Info/RSVP to info@stahrshrm.com

A graphic for an upcoming webinar. It features three colorful speech bubbles (pink, blue, and green) containing question marks. Below the bubbles are two circular headshots of speakers: a man with glasses and a woman with dark hair.

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A photograph of a glowing neon sign that says "ASK" in large, yellow-outlined letters. The sign is mounted on a brick wall next to a black street lamp. Below the photo is a white box with the text "YOUR QUESTIONS" and a blue bar at the bottom.

YOUR QUESTIONS

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