

NYC'S PAID SICK LEAVE LAW TAKES EFFECT APRIL 1, 2014

TOGETHER WE CAN KEEP BUSINESSES STRONG
AND KEEP NEW YORKERS HEALTHY

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“The benefits of paid sick leave extend far beyond the positive impact on individual families. It's also about making our businesses run better, and protecting the health and welfare of their customers.”

- Mayor Bill de Blasio

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NYC
Bill de Blasio
Mayor

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WHAT WE WILL COVER

- Overview of the law
- Which employers must comply with the law
- Which employees are covered/not covered by the law
- Notice of Employee Rights
- Accrual and rate of pay for sick leave
- Use of sick leave
- Compliance
- Q & A

OVERVIEW OF THE LAW

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NYC'S PAID SICK LEAVE LAW

- NYC is the 7th jurisdiction to guarantee access to sick leave for employees under the Earned Sick Time Act (Paid Sick Leave Law).
- More than 1 million NYC employees will now have the right to sick leave.

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NYC'S PAID SICK LEAVE LAW

- Certain employers must comply with the law starting April 1, 2014.
- Under the law, covered employees have the right to use sick leave for the care and treatment of themselves or a family member.

WHICH EMPLOYERS MUST COMPLY WITH THE LAW

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WHICH EMPLOYERS MUST PROVIDE SICK LEAVE?

- Employers with 5 or more employees or 1 or more domestic workers must provide **paid** sick leave.
- Employers with less than 5 employees must provide **unpaid** sick leave.

HOW SHOULD EMPLOYERS CALCULATE NUMBER OF EMPLOYEES?

- Employers should count full-time, part-time, and temporary employees who work more than 80 hours per calendar year.
- If the number of employees changes every week:

Existing employers <i>(Operating more than 1 year as of April 1, 2014):</i>	New employers <i>(Operating less than 1 year as of April 1, 2014):</i>
Count average number of employees paid per week during the prior calendar year.	Count average number of employees paid per week during first 80 days of operation.

WHICH EMPLOYEES ARE COVERED/NOT COVERED BY THE LAW

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WHICH EMPLOYEES ARE COVERED?

- Employees who work more than 80 hours in NYC per calendar year are covered.
- Includes:
 - Full-time employees
 - Part-time employees
 - Transitional jobs program employees
 - Undocumented employees
 - Employees who are family members but not owners
 - Employees who live outside of NYC but work in NYC

WHICH EMPLOYEES ARE NOT COVERED UNDER THE LAW?

- Employees who work 80 hours or less a calendar year in NYC.
- Students in federal work study programs.
- Employees whose work is compensated by qualified scholarship programs.
- Employees of government agencies.
- Participants in Work Experience Programs (WEP).

WHICH EMPLOYEES ARE NOT COVERED UNDER THE LAW?

- Certain employees subject to a collective bargaining agreement.

For most employees:

Agreement must expressly waive the law's provisions and provide comparable benefit.

For employees in the **grocery** or **construction** industries:

Agreement must expressly waive the law's provisions but **does not** have to provide comparable benefit.

WHICH EMPLOYEES ARE NOT COVERED UNDER THE LAW?

- Physical Therapists, Occupational Therapists, Speech Language Pathologists, Audiologists licensed by NYS Department of Education.
 - Not covered if:
 - Call in for work at will.
 - Determine own schedule and assignments.
 - Paid average hourly wage 4x the federal minimum wage.

WHICH EMPLOYEES ARE NOT COVERED UNDER THE LAW?

- Independent contractors.
 - Not covered if they do not meet definition of an employee under NYS Labor Law.
 - Factors include how much supervision, direction, and control employer has over services being provided.

WHAT IS A CALENDAR YEAR?

- Used to determine rate of accrual, when leave is available for use.
- Means any consecutive 12-month period of time determined by employer.
- Employers must include their calendar year in the required written Notice of Employee Rights.

NOTICE OF EMPLOYEE RIGHTS

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NOTICE OF EMPLOYEE RIGHTS

- Employers must give covered employees the Notice of Employee Rights created by DCA.

Existing employees <i>(Already employed before April 1):</i>	New employees <i>(First employed on or after April 1):</i>
Must get Notice by May 1.	Must get Notice on first day of employment.
Required Notice is on DCA website: nyc.gov/PaidSickLeave .	

- Notice will be available in English, Spanish, Chinese, French-Creole, Italian, Korean, and Russian.

NOTICE OF EMPLOYEE RIGHTS

- Employers are not required to keep or maintain a copy of the Notice signed by the employee; however, **saving signed copies is recommended for record keeping.**
- Employers can give employees the Notice in person, by regular mail, or by email. Save email receipts.

WHAT IS IN NOTICE OF EMPLOYEE RIGHTS?

- Accrual rate and information on how to use sick leave.
- Employer's calendar year.
- Right to be free from retaliation.
- Right to file a complaint.

Notice of Employee Rights

Under New York City's Earned Sick Time Act (Paid Sick Leave Law), certain employers must give their employees sick leave. Go to nyc.gov/PaidSickLeave to learn which employees are covered by the law.

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 less than five employees must provide unpaid sick leave.

Employers who have one or more domestic workers paid more than 80 hours a calendar year must provide paid

By law, employers who must provide sick leave must begin employment and to existing employees by May 1, 2015.

You have a right to sick leave, which you use yourself or a family member.

Amount of Sick Leave:

- Your employer must provide up to 40 hours of sick leave per calendar year. Start of Calendar Year: [MONTH DAY] ____ |

- **Domestic workers:** Your employer must provide paid rest to which you are entitled under [New York City's "Domestic Workers' Bill of Rights"](#) for more information.

Rate of Accrual:

- You accrue sick leave at the rate of one hour for every 30 hours worked per calendar year.
- **Domestic workers:** You must have worked for at least 90 days to be eligible for paid sick leave under City law. DCA will provide guidance.

Date Accrual Begins:

You begin to accrue sick leave on April 1, 2014 or on your start date.

Exception: If you are covered by a collective bargaining agreement, you accrue sick leave under City law beginning on the date the agreement takes effect.

Date Sick Leave is Available for Use:

- You can begin using sick leave on July 30, 2014 or later.
- **Domestic workers:** DCA will provide guidance nyc.gov/PaidSickLeave.

Acceptable Reasons to Use Sick Leave:

You can use sick leave when:

- You have a mental or physical illness, injury, or treatment of your mental or physical illness;
- You must care for a family member who needs physical illness, injury, or health condition, or who is unable to care for themselves;
- Your employer's business closes due to a public health emergency or child care provider closed due to a public health emergency.

03/20/2014

Family Members:

The law recognizes the following as family members:

- 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)

Advance Notice:

If the need is foreseeable, your employer can require up to seven days advance notice of your intention to use sick leave. If the need is unforeseeable, your employer may require you to give notice as soon as practicable.

Documentation:

Your employer can require documentation from a licensed health care provider if you use more than three consecutive workdays as sick leave. The Paid Sick Leave Law prohibits employers from requiring the health care provider to specify the medical reason for sick leave. Disclosure may be required by other laws.

Unused Sick Leave:

Up to 40 hours of unused sick leave can be carried over to the next calendar year. However, your employer is only required to let you use up to 40 hours of sick leave per calendar year.

You have a right to be free from retaliation from your employer for using sick leave.

Your employer cannot retaliate against you for:

- 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 a court proceeding regarding an alleged violation of the law.
- Informing another person of that person's potential rights.

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

You have a right to file a complaint.

You can file a complaint with DCA. To get the complaint form, go online to nyc.gov/PaidSickLeave or contact 311 (212-NEW-YORK outside NYC).

DCA will conduct an investigation and try to mediate your complaint. DCA will keep your identity confidential unless disclosure is necessary to conduct the investigation, mediate the complaint, or is required by law.

Keep a copy of this notice and all documents that show your amount of sick leave and your sick leave accrual and use.

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.

You have a right to be given this notice in English and, if available on the DCA website, your primary language. DCA has translated this notice to Spanish, Chinese, French-Creole, Italian, Korean, and Russian.

For more information, including Frequently Asked Questions, go to nyc.gov/PaidSickLeave or call 311 and ask for information about Paid Sick Leave.



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ACCRUAL AND RATE OF PAY FOR SICK LEAVE

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HOW DOES ACCRUAL WORK FOR EMPLOYEES?

- An employee earns 1 hour of sick leave for every 30 hours worked.
- An employee can accrue up to 40 hours of sick leave per calendar year.

	Date Accrual Begins	Date Accrued Sick Leave Available for Use
Existing employee	April 1, 2014	July 30, 2014
New employee	First day of employment	120 days after first day of employment

WHAT ABOUT COLLECTIVE BARGAINING AGREEMENTS?

- Employees covered by a collective bargaining agreement in effect on April 1, 2014 begin to accrue sick leave on the day the agreement ends.

WHAT IS THE RATE OF PAID SICK LEAVE?

- Employers with 5 or more employees pay employees at their regular hourly rate but no less than \$8 per hour (minimum wage).
 - This includes employees whose salary is based on tips or gratuity.

RECAP: EMPLOYEES

Number of Employees	Amount of Sick Leave per Calendar Year	Paid or Unpaid	Rate of Pay
5 or more	Up to 40 hours	Paid	Regular hourly rate but no less than \$8 per hour (minimum wage)
1 - 4	Up to 40 hours	Unpaid	Not Applicable

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OVERVIEW: DOMESTIC WORKERS

Number of Employees	Amount of Sick Leave per Calendar Year	Paid or Unpaid	Rate of Pay
1 or more domestic workers	2 days after one year working for same employer	Paid	Regular hourly rate but no less than \$8 per hour (minimum wage)

- City leave is in addition to 3 days of paid rest under NYS Labor Law.
- Accrual and use of sick leave follow NYS Labor Law.

USE OF SICK LEAVE

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WHAT ARE ACCEPTABLE REASONS TO USE SICK LEAVE?

- Employees can use leave for themselves or a family member for:
 - Mental or physical illness, injury, or health condition.
 - Medical diagnosis, care, or treatment of above.
 - Preventive medical care.
- Business closes due to a public health emergency.
- Care of child whose school or child care provider closed due to a public health emergency.

WHO IS A FAMILY MEMBER UNDER THE LAW?

- The law recognizes the following as a 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)

WHAT HAPPENS TO UNUSED SICK LEAVE?

- Employees can carry over unused sick leave to the next calendar year.
- Employers are only required to give up to 40 hours of sick leave per calendar year.

CAN EMPLOYER PAY AN EMPLOYEE FOR UNUSED SICK LEAVE?

- An employer can pay an employee for unused sick leave at the end of the calendar year. **This is not required.**
- Employees **cannot** carry over sick leave if:
 - The employer pays them for the unused sick leave. AND
 - The employer gives employee up to 40 hours of sick leave on the first day of the new calendar year.

WHAT HAPPENS TO UNUSED SICK LEAVE FOR REHIRES?

- If an employee is rehired within 6 months, the employer must reinstate previously accrued sick leave.
 - **Exception:** Employer paid employee for unused sick leave when employee left.

MUST EMPLOYEE GIVE ADVANCE NOTICE TO USE SICK LEAVE?

- If the need is **foreseeable**, employer can require up to 7 days advance notice before employee uses sick leave.
 - *Example: scheduled doctor's appointment*
- If the need is **unforeseeable**, employer may require employee to give notice as soon as practicable (reasonable).
 - *Example: accident*

DOES EMPLOYEE NEED A DOCTOR'S NOTE?

- Employers can require documentation from a licensed health care provider if employee uses more than 3 consecutive workdays as sick leave.
 - Employers cannot require provider to specify the medical reason for sick leave.
 - Note: A workday does not need to be a full day if the employee works part time.
- Employers may require employee to provide written verification that employee used sick leave for sick leave purposes.

WHAT ABOUT AN EMPLOYER'S EXISTING LEAVE POLICIES?

- The Paid Sick Leave Law sets the **minimum requirements** for sick leave.
- An employer's existing leave policies may already meet or exceed the requirements of the law.

COMPLIANCE

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WHAT DOES *RIGHT TO BE FREE FROM RETALIATION* MEAN?

- An employer cannot retaliate against employees for requesting or using sick leave.
- Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in hours, or any other adverse employment action against employee.

WHAT RECORDS ABOUT SICK LEAVE MUST EMPLOYER KEEP?

- Employers must keep and maintain records documenting compliance with the law for at least 3 years.
- Employers must keep any health related information confidential.

HOW DOES THE COMPLAINT PROCESS WORK?

- Employees have 2 years to file a complaint with DCA.
- DCA will keep the employee's identity confidential unless disclosure is necessary to investigate, mediate, or is required by law.
- DCA will contact employer by mail for written response. Employers must respond to DCA within 30 days.

HOW DOES THE COMPLAINT PROCESS WORK?

- DCA will conduct a fair investigation of the complaint.
- If there is a violation, DCA will work with the employer and the employee to try to resolve the complaint through mediation.
- DCA will also work with the employer to come into compliance with the law.

WHAT HAPPENS WHEN MEDIATION DOESN'T WORK?

- If employer receives a notice of violation, the employer has the opportunity to:
 - Settle the violation without a hearing. OR
 - Appear before an impartial judge at DCA's Adjudication Tribunal.
- Employers must make records available to DCA upon notice at an agreed upon time.
- The judge will hear testimony from DCA, the employer, and any witnesses.

WHAT RELIEF DO EMPLOYEES HAVE UNDER THE LAW?

- Under the law, a judge may order the following relief:
 - Full compensation, including lost wages and benefits, \$500 and appropriate equitable relief for each time employer punished 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 employer fires employee for taking sick leave.
 - 3x the wages employee should have been paid for each time employee took sick leave but wasn't paid or \$250, whichever is greater.
 - \$500 for each time employee was denied sick leave or was required to find replacement worker, or each time employee was required to work additional hours without mutual consent.

WHAT ARE MAXIMUM PENALTIES UNDER THE LAW?

- The law outlines the following maximum penalties:
 - \$500 for first violation.
 - Up to \$750 for a second violation within 2 years of a prior violation.
 - Up to \$1,000 for subsequent violations that occur within 2 years of any previous violation.
 - Up to \$50 for each employee who was not given the required written notice.

WILL ALL EMPLOYERS BE SUBJECT TO PENALTIES STARTING APRIL 1, 2014?

- All employers must comply with the law starting **April 1, 2014**.
- Up to **October 1, 2014**, certain employers will have the opportunity to ensure compliance without a penalty and a first violation before this date will not be counted:
 - Employers with 1-19 employees
 - Manufacturing businesses

APRIL 29 PUBLIC HEARING AND OPPORTUNITY TO COMMENT

- DCA is holding a public hearing at **10 a.m. on Tuesday, April 29** on proposed Rules to clarify provisions in the Paid Sick Leave Law.
- DCA published proposed Rules in *The City Record* on March 28.
- Rules are available online at nyc.gov/PaidSickLeave.

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DCA IS HERE TO HELP

- Materials, including required Notice of Employee Rights, are available:
 - Online at nyc.gov/PaidSickLeave
 - Contact **311** (212-NEW-YORK outside NYC)
- Contact DCA with questions:
 - Call **311** and ask for information about Paid Sick Leave
 - Email PaidSickLeave@dca.nyc.gov
 - Use online Live Chat at nyc.gov/BusinessToolbox
(Businesses only)

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DCA IS HERE TO HELP

- DCA is conducting trainings in all 5 boroughs:
 - For the list of scheduled trainings in all 5 boroughs, visit nyc.gov/PaidSickLeave
 - To schedule a training specifically for your organization, email QMickie@dca.nyc.gov

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QUESTIONS?

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[NYC.gov/PaidSickLeave](https://nyc.gov/PaidSickLeave)

PaidSickLeave@dca.nyc.gov

CONTACT 311 (212-NEW-YORK)

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