

NEW YORK

EMPLOYMENT LAW

Employee Leave Laws—Overview



Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation package, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws (for example, the Family and Medical Leave Act, or FMLA) require covered employers to provide employees with leave in certain situations.

In addition to federal leave laws, New York has laws regarding:

- Family leave;
- Paid sick leave;
- Civic duty leave;
- Voting leave;
- Military and military spouse leave;
- Bone marrow and blood donation leave;
- Adoptive parents leave;
- Bereavement leave;
- Domestic violence leave; and
- Emergency responder leave.

This Employment Law Summary includes a chart that provides a high-level overview of New York's employee leave laws, and suggests compliance steps for employers.

OVERVIEW OF EMPLOYEE LEAVE LAWS

TYPE OF LEAVE	REQUIREMENTS
Paid Family Leave	New York's paid family leave law requires private sector employers to provide paid family leave benefits to eligible employees. The paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.

STATE RESOURCES

New York Department of Labor (NYDOL)

<https://www.labor.ny.gov/home/>

FAQs

The NYDOL published [answers](#) to frequently asked questions about paid family leave.

Paid Family Leave for Employers

New York provides [paid family leave information for employers](#), including FAQs and other resources.

Employee Notice

Employers can use this [model language](#) to satisfy their notice requirements under the paid family leave law.

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TYPE OF LEAVE	REQUIREMENTS
Paid Family Leave (cont.)	Coverage for paid family leave benefits is typically included under an employer's existing disability benefits policy. Under the law, employees must receive: • Wage replacement benefits for up to eight weeks of leave in 2018, increasing to 12 weeks by 2021; • Job reinstatement upon return from paid family leave; and • Continuation of health insurance while out on paid family leave. An employer may not discriminate or retaliate against employees for taking or inquiring about paid family leave. Employers are required to conspicuously post a notice in the workplace to indicate their compliance with the paid family leave requirements. In addition, employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the paid family leave law. Employers that maintain an employee handbook must include a paid family leave policy that outlines employees' rights and obligations, including how to file a claim for paid family leave. An employer that does not maintain a handbook must provide each employee with a written notice regarding all of the employee's rights and obligations under the paid family leave law, including information on how to file a claim for paid family leave.
Paid Sick Leave	Beginning Jan. 1, 2021, employees are eligible for 40-56 hours of paid or unpaid sick leave per year, depending on employer size and income, as follows: • Fewer than 5 employees; annual net income \$1 million or less: Up to 40 unpaid hours • Fewer than 5 employees; annual net income over \$1 million: Up to 40 paid hours • 5-99 employees: Up to 40 paid hours • 100 or more employees: Up to 56 paid hours On Sept. 30, 2020, employees begin accruing one hour of sick leave for every 30 hours worked. Frontloading and carryover are permitted; however, employers with policies that meet or exceed the law's benefits are not required to provide additional leave. Leave must be allowed for specified reasons related to an employee's or family member's physical or mental illness, injury or health condition. Employees may also take leave for certain reasons related to domestic violence. Employer confidentiality rules apply. Employees must be paid at their regular rate of pay or the applicable state law minimum wage, whichever is greater, but employees are not entitled to a payout of unused leave at the end of employment. Retaliation is prohibited, and employees returning from leave must be restored to their former positions. Employers must keep records of employee sick leave for six years, and they must provide a summary of accrued and used sick leave within three days on employee request.
Civic Duty Leave	An employee who is summoned to serve as a juror is eligible to take unpaid leave for the period of jury service. Employers with more than 10 employees cannot withhold the first

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TYPE OF LEAVE	REQUIREMENTS
	\$40 of the juror's daily wages during the first three days of jury service. Notice and certification requirements apply. Employers must allow employees who are crime victims or are subpoenaed as witnesses in criminal proceedings to take time off from work to attend the criminal proceedings. Leave is unpaid. Notice and certification requirements apply.
Voting Leave	New York State employees who are registered voters are eligible for up to two hours of paid time off to vote if they do not have "sufficient time to vote." "Sufficient time to vote" means four consecutive hours either from the opening of the polls to the beginning of the work shift, or from the end of the shift to the closing of the polls. The amount of paid time off required must be determined on a case-by-case basis, as waiting times at polling places, traffic conditions and other factors may vary. Time off for voting is required only at the beginning or end of employees' working shifts, as the employer may designate, unless otherwise mutually agreed. Notice and posting requirements apply.
Military and Military Spouse Leave	In addition to USERRA, New York law provides employment protections for New York and U.S. military members, including reemployment rights and military spouse leave. Under military spouse leave, employers with 20 or more employees working in at least one work site must grant up to 10 days of unpaid leave to an employee who is a spouse of a military service member who has been deployed during a period of military conflict. Eligible employees must have worked for a covered employer for an average of 20 or more hours per week. Leave may only be taken while the military service member is on leave from deployment.
Bone Marrow and Blood Donation Leave	Employers with 20 or more employees working in at least one work site must provide eligible employees with leave for bone marrow and blood donation. Employees are eligible for bone marrow or blood donation leave if they: • Work for a covered employer for an average of 20 or more hours per week; and • Seek to donate bone marrow or blood. Leave for bone marrow donation may be taken in one or more periods, but may not exceed 24 work hours for each bone marrow donation. The leave period for blood donation varies depending on whether the donation takes place on or off the employer's premises. Notice and certification requirements apply. Leave may be paid or unpaid, at the employer's discretion.
Adoptive Parents Leave	Employers must give employees who adopt a child the same leave benefits given to employees for the birth of a child, if the adopted child is either: • Younger than school age (under five years old); or • Hard to place or handicapped, and under 18 years old. Employers cannot retaliate against an employee for exercising his or her right to adoptive parents leave.

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Bereavement Leave	Employers are <i>not</i> required to provide funeral or bereavement leave for employees. If employers allow employees to take funeral or bereavement leave for the death of the employee's spouse, or the child, parent or other relative of the employee's spouse, the employer must provide the same leave to an employee for the death of the employee's same-sex committed partner, or the child, parent or other relative of that partner.
Domestic Violence Leave	Effective Nov. 18, 2019, employers must allow employees they know are domestic violence victims to take leave to obtain: • Medical attention (including for a child); • Services from a domestic violence shelter, program or rape crisis center; • Psychological counseling (including for a child); or • Legal services. Employees may also take leave to increase safety from future domestic violence, including relocating, and to assist in prosecuting the offense or appear in court. Notice and certification requirements apply. Employers who can show the leave would cause undue hardship are not required to provide leave. Employees may be required to take the leave as ordinary paid leave, or as unpaid leave where paid leave is not available.
Volunteer Emergency Responder Leave	Employees who are volunteer firefighters or members of a volunteer ambulance service must be granted an unpaid leave from work while engaged in their volunteer duties in response to a declared emergency. To be eligible, an employee must have previously provided his or her employer with written documentation of the employee's volunteer status. Additionally, the employer may request documentation of the employee's volunteer service during the leave period. The employee may elect to substitute the unpaid leave with other accrued vacation or paid leave available to the employee.

Please note that the information in the above chart focuses on statewide laws. Employers must be aware that localities across the country have enacted ordinances that mandate employers provide paid sick leave to employees. An employer in a locality with a paid sick leave law must comply with the local ordinance and statewide law, if applicable.

COMPLIANCE STEPS

Employers that violate state or federal leave law requirements may be subject to government investigations, fines, employee lawsuits and significant penalties, fees and damage awards.

To minimize these risks, employers should review applicable federal and state leave law requirements and determine whether they have any compliance gaps to correct. This compliance review may be complex, especially in areas where federal and state leave laws overlap.

As part of the compliance review, employers should confirm that:

- Employee handbooks, and written policies and procedures have been updated to accurately describe the different types of employee leaves;

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- Human resources personnel, as well as managers and supervisors, are educated on how to administer employee leaves and receive ongoing training;
- Employee leaves are administered on a consistent basis, and employees are educated on leave rights and requirements;
- Recordkeeping systems accurately track and document employee leaves; and
- Required notices and posters about leave laws are provided.