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Mayor

**Consumer and
Worker Protection**

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Paid Safe and Sick Leave Law: Frequently Asked Questions

COVID-19 Alert

Update about Workplace Laws During COVID-19, available at nyc.gov/workers, includes a summary of City labor laws for employers and employees as you deal with the impact of COVID-19 on your workplace.

The Department of Consumer and Worker Protection (DCWP) Office of Labor Policy & Standards (OLPS) enforces NYC's Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law) referred to in FAQs as the Law.

These FAQs provide general information and guidance for employees and employers. They are not intended to serve as individualized legal advice.¹ For specific questions, you should contact your legal advisor.

To contact OLPS:

- Email PSSL@dca.nyc.gov
- Call 311 (212-NEW-YORK outside NYC) and say "Paid Safe and Sick Leave"
- Use Live Chat, available at nyc.gov/BusinessToolbox (*employer inquiries only*)
- Visit nyc.gov/workers²

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¹ OLPS will update FAQs as appropriate. Please note the date at the bottom of FAQs and check nyc.gov/workers to make sure you have the most current FAQs.

² Visit nyc.gov/workers for the law and rules, helpful sample documents, and information about other labor laws enforced by DCWP.

I. GENERAL QUESTIONS

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

The Law went into effect on April 1, 2014. The Law was amended twice:

- **May 5, 2018:** Safe leave provisions took effect.
- **September 30, 2020:** Amendments to expand safe and sick leave and to bring the Law in line with New York State law requirements took effect.

2. What is sick leave?

Sick leave is time off work for health reasons. Covered employees can use sick leave for the care and treatment of themselves or a family member.

3. What is safe leave?

Safe leave is time off work for safety reasons. Covered employees can use safe leave to seek assistance or to take other safety measures if the employee or a family member is the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

4. Who is considered a family member under the Law?

The Law has a broad definition of family member that includes the following:

- Child (biological, adopted, or foster child; legal ward; child of an employee standing *in loco parentis*)
- Spouse (current or former, and regardless of whether they reside together)
- Domestic Partner (current or former, and regardless of whether they reside together)³
- Parent
- Child or parent of an employee's spouse or domestic partner
- Grandchild or grandparent
- Sibling (half, adopted, or step sibling)
- Any other individual related by blood to the employee
- Any other individual whose close association with the employee is the equivalent of a family relationship

5. Which employers must provide safe and sick leave?

Private, nonprofit, and household employers that employ workers in NYC must provide safe and sick leave.

Employers with 4 or fewer employees:

- must provide up to 40 hours of *unpaid* safe and sick leave if the employer's net income is less than \$1 million in the previous tax year.
- (*as of January 1, 2021*) must provide up to 40 hours of *paid* safe and sick leave if the employer's net income is \$1 million or more in the previous tax year.

³ A "domestic partner" is a person with a domestic partnership registered under Section 3-240 of the New York City Administrative Code. For more information about the requirements and procedure for registering as domestic partners, visit the Office of City Clerk website at cityclerk.nyc.gov

Employers with 5 or more employees regardless of net income:

- must provide up to *40 hours* of paid safe and sick leave if the employer employs up to 100 employees.
- (as of *January 1, 2021*) must provide up to *56 hours* of paid safe and sick leave if the employer employs 100 or more employees.
 - Employees may accrue up to 56 hours of paid safe and sick leave as of September 30, 2020 but are not entitled to use hours 41-56 until January 1, 2021.

Employers of domestic workers:

- must provide up to *40 hours* of paid safe and sick leave if the employer employs up to 100 employees.
- (as of *January 1, 2021*) must provide up to *56 hours* of paid safe and sick leave if the employer employs 100 or more employees.

6. Are nonprofit employers covered by the Law?

Yes. Nonprofit employers are covered by the Law and must comply with its requirements.

7. How is employer size determined?

Employers should count all employees who work for pay on a full-time, part-time, seasonal, or temporary basis.

Employers that have operated for less than one year:

- Employers should count the number of employees performing work for pay per week. If the number fluctuates, employer size may be determined for the current Calendar Year based on the average number of employees per week who worked during the 80 days immediately preceding the date the employee used safe and sick leave.

Employers that have operated for one year or more:

- Employers should count the number of employees working for the employer per week at the time the employee used safe and sick leave. If the number of employees fluctuated between less than five employees and five or more employees three times in the most recent calendar quarter, employer size may be determined for the current Calendar Year based on the average number of employees per week during the previous Calendar Year.

8. What does “Calendar Year” mean?

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

Note: Employers must include their Calendar Year in the written Notice they must give employees. See Section III, starting with FAQ 12.

9. If the employer is part of a chain business and/or has multiple locations, which employees count toward the number of employees?

If a business has multiple locations and the owner or principal of the multiple locations owns at least 30% of each location and each location is either engaged in the same business or operates under a franchise agreement 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.⁴

Scenarios:

Kenny, an employer, owns 50% of each of three pizzerias in New York City. Each location employs four employees. Would Kenny have to provide paid or unpaid safe and sick leave?

Kenny must provide *paid* safe and sick leave to his employees. Kenny should count all 12 employees toward the number of employees.

Silvia owns 25% of one fast food restaurant, which is operated under a franchise agreement with a franchisor. There are 50 other locations of this franchise in New York City. Silvia employs four workers at her restaurant. Would Silvia have to provide paid or unpaid safe and sick leave?

Silvia must provide *unpaid* safe and sick leave to her employees. Silvia owns less than 30% of one franchise, the restaurant is not part of a group of locations that share a common owner or principal who owns at least 30% of each establishment, and Silvia employs fewer than five employees.

Possible exception as of January 1, 2021:

If Silvia's net income is \$1 million or more in the previous tax year, then, starting January 1, 2021, Silvia must provide *paid* safe and sick leave to her employees.

10. Do employees who do not live in New York City count toward the number of employees?

Yes. The Law applies to employees *employed* in New York City. For counting purposes, it does not matter where the employees live.

11. Does an employer based outside of New York City have to provide safe and sick leave to employees who work in New York City?

Yes. Employers located outside New York City must provide safe and sick leave to employees who work in New York City.

⁴ Go to ag.ny.gov and search "Franchisors and Franchisees" or consult Section 681 of the New York State General Business Law for more information.

Scenarios:

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

Yes. Making deliveries or pickups in New York City is performing work in New York City.

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 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 Law, which does not apply to employees who do not work in New York City.

12. Can an employee have more than one employer?

Yes. Two or more employers may be a "joint employer" of an employee, with each having some control over the employee's work or working conditions. Joint employers may be separate and distinct individuals or entities with separate owners, managers, and facilities.

Example: A general contractor and its subcontractor may be joint employers of employees on the same construction project.

13. If employers are joint employers, which employer is responsible for compliance with the Law?

Generally, each joint employer is responsible, jointly and severally, for compliance with all applicable provisions of the Law and payment of any relief and penalties for violations of the Law.

Example: If a franchisor employer exercises some control over the work or working conditions of a franchisee's employees, both the franchisee and franchisor may be considered joint employers of the employees under the Law and have an obligation to ensure that its requirements are met.

14. What factors are considered in determining whether an employer is a joint employer?

Whether an employer is a joint employer of the employee is based on an assessment of the employer's exercise of control over the work or working conditions of an employee. Factors that are considered include but are not limited to whether:

- i. The employer established policies or practices related to the employment, supervision, and/or working conditions of the employee.
- ii. The employer has the power to hire and fire the employee.
- iii. The employer supervises and controls the employee's work schedule or conditions of employment.
- iv. The employer determines the rate and method of payment.
- v. The employer maintains the employee's employment records.

- vi. The employee uses the employer's premises and equipment.
- vii. The employee performs discrete work that is integral to the employer's production or work.
- viii. The employee works exclusively or predominantly for the employer.
- ix. The employer provides training to the employee.

15. How should joint employers count the employees they jointly employ?

Every employer that is a joint employer must count each employee jointly employed in determining the number of employees who work for pay.

Example: An employer who jointly employs three workers and also has three employees under its sole control has six employees for the purposes of the Law and must provide paid safe and sick leave to each employee.

Example: An employer employs four workers through a temporary help firm as well as three permanent workers who are employed directly and under the employer's sole control. That employer has seven employees for purposes of the Law and must provide paid safe and sick leave.

16. If an employee has two or more joint employers, does the employee accrue separate leave balances with each employer for the same work?

No. If an employee is employed by two or more joint employers, all of the employee's work for each of the joint employers will be considered as a single employment for purposes of accrual and use of safe and sick leave under the Law.

Scenario:

Maria is a garment worker employed by a contractor (ABC Corp.) that contracts with a manufacturer (XYZ Corp.) to assemble garments. ABC Corp. and XYZ Corp. are joint employers of Maria. How is Maria covered by the Law?

All of the hours Maria works assembling garments for both ABC Corp. and XYZ Corp. are counted as a single employment and, together, her joint employers must provide safe and sick leave, which she accrues at a rate of 1 hour for every 30 hours she works.

Maria *does not* maintain two different balances of accrued safe and sick leave, one each with ABC Corp. and XYZ Corp.

17. What is a temporary help firm?

A temporary help firm is an organization that recruits and hires its own employees and assigns those employees to perform work or services for another organization to:

- i. support or supplement the other organization's workforce;
- ii. provide assistance in special work situations, such as employee absences, skill shortages, or seasonal workloads; or
- iii. perform special assignments or projects.

A placement firm that does not hire employees on its own behalf would not meet the definition of temporary help firm.

II. EMPLOYEES COVERED BY THE LAW

1. Which employees are covered by the Law?

Most employees who work in New York City are covered by the Law, including:

- Full-time employees
- Part-time employees
- Domestic workers
- Temporary and seasonal employees
- Per diem and on-call employees
- Transitional jobs program employees
- Undocumented employees
- Employees who are family members but not owners
- Employees who live outside of New York City but work in New York City
- Owners who are considered employees under New York State Labor Law

2. Which employees are not covered by the Law?

The Law does not apply to:

- Government employees (federal, State of New York, City of New York)
- Participants in federal work-study programs⁵
- Employees whose work is compensated by qualified scholarship programs as defined in 26 U.S.C. § 117⁶
- Hourly professional employees who:
 - i. are licensed by the New York State Education Department under Sections 6732, 7902, or 8202 of the New York State Education Law;
 - ii. call in for work assignments, at will, to determine their work schedule with the ability to reject or accept any assignment referred to them; and
 - iii. are paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the Calendar Year.
- Independent contractors who do not meet the definition of an employee under New York State Labor Law⁷
- Certain employees subject to a collective bargaining agreement
- Participants in Work Experience Programs (WEP) under Section 336-c of the New York State Social Services Law
- Owners who do not meet the definition of an employee under New York State Labor Law

3. Does the Law cover domestic workers?

Yes, the Law has always covered domestic workers. However, under new amendments that took effect on September 30, 2020, domestic workers are now covered the same as private or nonprofit employees working for employers with 5 or more employees.

⁵ Information about federal work-study programs is available on the U.S. Department of Education website ed.gov

⁶ For more information, see the [Internal Revenue Code](#).

⁷ Go to labor.ny.gov and search for "Independent Contractors."

Specifically:

- Domestic workers accrue safe and sick leave at the rate of 1 hour for every 30 hours worked, up to a maximum of 40 hours per year (or, effective January 1, 2021, up to a maximum of 56 hours per year if their employer employs 100 or more employees).
- Domestic workers may use safe and sick leave as it is accrued.

Domestic workers are workers who provide care, companionship, housekeeping, or any other domestic service in a home, whether employed by an agency or a household.

Examples: Domestic workers include nannies, housekeepers and house cleaners, and home health aides. They may be solely employed or jointly employed, e.g., by a household employer and an agency employer.

Domestic workers who are also entitled to days of rest under New York State Labor Law have these days of rest count toward fulfillment of the City Law requirements only if the days of rest are made available on the same terms and conditions as required by City Law. If they are not, then the days of rest are additional days for worker use apart from what City Law provides.

4. Does the Law apply to undocumented workers?

Yes. All covered workers have the same rights and protections under the Law, regardless of immigration status.

In addition, DCWP will answer questions and process safe and sick leave complaints without regard to immigration status. DCWP will not ask about workers' immigration status during the course of any DCWP investigation.

5. Does the Law apply to employees who are based outside New York City but who work in New York City on an occasional basis?

Yes. For employees who work in New York City on an occasional basis, the employer must calculate safe and sick leave accruals based on the hours that the employee spends working in New York City.

6. Does the Law apply to supervisors, managers, and salaried employees?

Yes.

7. Does the Law apply to independent contractors?

No. The Law applies to employees only.

Whether a worker 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.

Workers may meet the legal standard for classification as employees even if they are considered independent contractors by their employers.

Example: Just because an employer issues a 1099 tax form to a worker, has a worker sign a contract stating that the worker is an independent contractor, or rents a workspace to a worker

(such as a chair in a salon), that does not necessarily mean the worker is actually an independent contractor.

8. If a worker believes that an employer misclassified the worker as an independent contractor instead of as an employee and, therefore, did not provide safe and sick leave as required by the Law, can the worker file a complaint with DCWP?

Yes. Workers who believe they have been misclassified as independent contractors may file a complaint with DCWP. As part of its investigation, DCWP will make a determination as to whether a worker is covered by the Law.

9. Does the Law apply to employees who telecommute?

Yes. Employees who telecommute are *covered* by the Law for the hours when they are physically working in New York City (on-site or by telecommuting), even if the employer is physically located outside New York City.

Employees are *not covered* for the hours when they are not physically working in New York City, even if the employer is physically located in New York City.

10. Does an employer have to provide safe and sick leave to employees who also work for other unrelated employers?

Yes. Assuming that the employee is eligible to accrue safe and sick leave from both employers, both employers must provide the employee with safe and sick leave. This is true even if the employee works for employers that are not joint employers.

11. Does the Law apply to industrial homeworkers?

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 New York City.

Employees are *not covered* by the Law if they perform their work from a residence outside New York City, even if the employer is physically located in New York City.

12. Does the Law apply to employees covered by collective bargaining agreements?

It depends.

The Law *does not apply* to employees covered by a valid collective bargaining agreement that was in effect on April 1, 2014 (or in effect before the effective date of subsequent amendments to the Law) until that collective bargaining agreement expires. For employees covered by a collective bargaining agreement, the Law does not apply if:

- i. the collective bargaining agreement expressly waives the Law's provisions; and
- ii. the agreement provides a comparable benefit to employees, such as paid time off.

If both of these conditions are not in place, the Law *does apply* to these employees.

Exception: For employees in the construction or grocery industries covered by a collective bargaining agreement that came into effect after April 1, 2014 (or after the effective date of subsequent amendments to the Law), 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.

III. RIGHT TO AND NOTICE OF SAFE AND SICK LEAVE

1. For what purposes can a covered employee use sick leave?

Employees can use sick leave to take time off from work when:

- They have a mental or physical illness, injury, or health condition; need to get a medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or need to get preventive medical care.
- They must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventive medical care.
- Their employer's business closes due to a public health emergency or they need to care for a child whose school or child care provider closed due to a public health emergency.

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

Yes. Employees may use sick leave for appointments when they require treatment for a condition or for preventive medical care.

3. What is preventive medical care?

Preventive medical care is routine health care that includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems.⁸

4. For what purposes can a covered employee use safe leave?

Covered employees can use safe leave if they or a family member may be the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking, and they need to take actions necessary to restore the physical, psychological, or economic health or safety of themselves or family members, or to protect those who associate or work with the employee, including to:

- Obtain services from a domestic violence shelter, rape crisis center, or other services program.
- Participate in safety planning, relocate, or take other actions to protect the employee's safety or that of the employee's family members, including enrolling children in a new school.
- Meet with an attorney or social service provider to obtain information and advice related to custody; visitation; matrimonial issues; orders of protection; immigration; housing; discrimination in employment, housing, or consumer credit.
- File a domestic incident report with law enforcement or meet with a district attorney's office.
- Attend civil or criminal court dates related to any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

⁸ For examples of preventive care for adults, women, and children, visit the federal website [HealthCare.gov](https://www.healthcare.gov)

5. Can an employee use safe leave even if the employee has not reported a crime to the police and/or if the crime has not been proven?

Yes. The Law does not require an employee to prove that a crime has occurred or been reported in order to use safe leave. Employees may use safe leave if they or a family member may be the victim of acts or threats of acts that may constitute the specified crimes under New York State Penal Law.

6. What is a family offense matter?

Family offense matters include:

- any threat or act of physical violence between family members;
- any threat or act of sexual assault or abuse by a family member;
- any threat or act of theft of money, property, or items of value among members of the same household.

7. What is human trafficking?

Human trafficking includes threats or acts that may constitute sex trafficking and labor trafficking.

A victim of sex trafficking has been coerced into prostitution involuntarily due to narcotic substances or other drugs; to pay a real or perceived debt; because someone withheld or destroyed government or immigration identification like visas or passports; through violence, threats, or lies; or any other coercive means defined in the New York State Penal Law.

A victim of labor trafficking has been coerced into labor to pay a real or perceived debt; because someone withheld or destroyed government or immigration identification like visas or passports; through violence, threats, or lies; or any other coercive means defined in the New York State Penal Law.

8. What is a sexual offense?

A sexual offense is any act, or threat of an act, that may constitute rape, sexual abuse, sexual assault, or other sex offense under the New York State Penal Law.

9. What is stalking?

Victims of stalking have experienced any act, or threat of an act, that may constitute the crime of stalking as defined by the New York State Penal Law. The crime of stalking may include:

- two or more acts with no legitimate purpose which cause victims to fear for the safety of themselves or loved ones;
- verbal, nonverbal, written, direct, or indirect threats which cause victims to fear for their safety or the safety of loved ones;
- a course of conduct, including following, telephoning, or contacting the victim or victim's family member, meant to cause reasonable fear of harm to the victim or victim's family's property, employment, or person.

The perpetrator of the crime of stalking may be known to the victim or may be a stranger.

Actions that have a legitimate purpose—for example, letters from a debt collector seeking payment on a valid debt—do not constitute stalking without other facts suggesting the sender's intent to cause harm.

10. What are some examples of safe leave?

Someone from Ruby's neighborhood has been following her. Recently, someone broke into her apartment while she and her 10-year-old son were out. No one was physically harmed, but Ruby suspects that it was the person who has been following her and she doesn't feel safe staying in her neighborhood anymore. She has decided to move in with her mom in another school district. Ruby needs to take a day off from work to enroll her son in his new school and to move their belongings to storage and her mom's apartment. May Ruby use safe leave?

Yes. Ruby is taking time off from work to move and to enroll her son in a new school because the acts against her are some of the acts that can constitute the crime of stalking. Stalking and threats or acts that may constitute stalking are covered by the Law; covered employees may use safe leave to relocate and to enroll children in a new school. Ruby's employer must provide safe leave.

Warren was mugged one early Sunday morning, a workday, after dropping off his partner at the airport. He needs to take a couple of hours off to go to the police station to identify suspects. Is the time Warren needs to take off safe leave?

No. Although Warren was the victim of a violent crime, it was not an act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. His employer is not required to provide him with leave under the Law. The Law, however, does not prohibit his employer from giving him time off to handle the police matter.

Francisco needs to take a half-day to go to court to obtain a restraining order against his son-in-law who used to live with him and assaulted Francisco. Is the time Francisco needs to take off from work safe leave?

Yes. Francisco is attending a court proceeding to protect himself and his family after a family offense matter. His employer must provide safe leave.

Jennifer, a salesclerk, is pickpocketed on the subway on her way to work and her wallet is stolen. She believes the perpetrator may have watched her withdrawing money from the ATM and followed her into the subway station. She immediately files a report with a law enforcement officer, causing her to be an hour late to work. Can Jennifer use safe leave for this time?

No. Pickpocketing is not an act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. Although in this case Jennifer may have been followed into the subway station, it's unlikely that the one-time incident, without evidence of a pattern or practice, constituted "stalking."

Donna, a paralegal, has been receiving counseling from her pastor after a domestic violence incident involving her ex-boyfriend. She needs to take the afternoon off work to attend a counseling session. May Donna use safe leave for this time?

Yes. Donna was the victim of a family offense matter and is meeting with her pastor in order to improve her psychological health. This would be considered a permissible use of safe leave.

11. Does safe leave provide more time off for employees, over and above sick leave?

No. The Law does not require employers to provide separate safe and sick leave to employees. Instead, employers must provide at least one form of leave that employees can use for either safe or sick leave purposes.

12. Are employers required to give employees notice of their right to safe and sick leave?

Yes. Employers must give covered employees a written Notice of Employee Rights. Employers must also post the Notice in the workplace in an area that is visible and accessible to employees. The Notice must be posted by January 1, 2021.

Employers must give a written Notice of Employee Rights to employees when they begin employment or when their rights change. Employees have a right to be given a Notice in English and, if available on the DCWP website, their primary language.

Note: Under the new amendments that took effect September 30, 2020, the following employers must provide an updated Notice of Employee Rights to employees by January 1, 2021:

- Employers with 100 or more employees
- Employers of domestic workers

The Notice of Employee Rights must include information about:

- Accrual and use of safe and sick leave
- Employer's Calendar Year
- Right to be free from retaliation
- Right to file a complaint

The Notice of Employee Rights is available at nyc.gov/workers.

DCWP encourages employees to keep copies of all Notices provided to employees.

13. Can employees file a complaint with DCWP if their employer does not provide a Notice of Employee Rights or other information about safe and sick leave?

Yes. Covered employees who have not received a Notice of Employee Rights or other information about safe and sick leave and who are not being provided with safe and sick leave as required by Law may file a complaint with DCWP.

14. For an employer based outside New York City whose employees work in New York City, when must the employer provide employees with the Notice of Employee Rights?

Employers must give Notice of the right to safe and sick leave to an employee once that employee begins to perform work for that employer while physically located in New York City.

15. In what language must an employer provide the Notice of Employee Rights?

An employer must provide the employee with the Notice of Employee Rights in English and in the language that the employer customarily uses to communicate with that employee. If available on the DCWP website, the employer must also provide the Notice in the employee's primary language and the language spoken by at least 5% of employees.

16. How should employers provide the Notice of Employee Rights to employees?

Employers must use a delivery method that reasonably ensures that employees receive the Notice.

Example: An employer may provide the Notice to each employee personally, or by regular mail or by email, or may provide the Notice to the employee by including it in new hire materials given directly to the employee. An employer cannot post the Notice at the workplace in lieu of individually providing the Notice to all covered employees.

17. Should an employer save a signed copy of the Notice of Employee Rights or an email receipt for the Notice?

Yes. The Law requires employers to keep or maintain records establishing the date the Notice was provided to an employee and proof that the Notice was received by the employee. Saving signed copies of the Notice or email receipts is a good way to document that employers gave employees the required Notice.

18. Does the Notice of Employee Rights have to be posted in the workplace?

Yes. Under the new amendments that took effect September 30, 2020, employers must post the Notice in the workplace in an area accessible to employees. The Notice must be posted by January 1, 2021. However, an employer cannot post the Notice at the workplace in lieu of individually providing the Notice to all covered employees.

19. Must an employer with safe and sick leave policies that meet or exceed the requirements of the Law give the required Notice of Employee Rights to employees?

Yes. An employer must give employees the Notice of Employee Rights so that employees are aware of their rights under the Law.

20. Do employers have to give employees regular information about how much safe and sick leave they have?

Yes. Employers must tell employees how much safe and sick leave they have accrued, used, and have available for use regularly. As of September 30, 2020, this information must appear on pay stubs or other documentation provided to employees each pay period.

IV. USE OF SAFE AND SICK LEAVE

1. Can employees use safe and sick leave for the care of adult children?

Yes. The Law allows covered employees to use sick leave to care for a child, regardless of age.

2. Can parents use safe and sick leave following the birth of their child?

A mother can use accrued sick leave during any period of sickness or disability following the birth of her child. The other parent can use accrued leave to care for the mother during this period. Parents also can use 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.

However, under City Law, parents cannot use sick leave to "bond" with a newborn or newly adopted child. The federal Family and Medical Leave Act (FMLA) allows leave for bonding purposes as does New York State's Paid Family Leave Law.

Under New York State's Paid Family Leave Law, employees in New York State have access to paid leave to:

- bond with a newborn, adopted, or foster child;
- care for a close relative with a serious health condition; or
- assist loved ones when a family member is deployed abroad in active military service.

3. How much safe and sick leave do employers have to give employees?

Depending on their size and/or net income, employers must give covered employees up to 40 hours (or 56 hours as of January 1, 2021) of safe and sick leave every Calendar Year. Employees may use accrued leave for safe or sick leave purposes.

Employers with 4 or fewer employees:

- must provide up to 40 hours of *unpaid* safe and sick leave if the employer's net income is less than \$1 million in the previous tax year.
- (*as of January 1, 2021*) must provide up to 40 hours of *paid* safe and sick leave if the employer's net income is \$1 million or more in the previous tax year.

Employers with 5 or more employees regardless of income:

- must provide up to *40 hours* of paid safe and sick leave if the employer employs up to 100 employees.
- (*as of January 1, 2021*) must provide up to *56 hours* of paid safe and sick leave if the employer employs 100 or more employees.

Employers of domestic workers:

- must provide up to *40 hours* of paid safe and sick leave if the employer employs up to 100 employees.
- (*as of January 1, 2021*) must provide up to *56 hours* of paid safe and sick leave if the employer employs 100 or more employees.

4. When do employees begin to accrue safe and sick leave?

Employees began to accrue leave on April 1, 2014 or on their first day of employment, whichever is later.

5. How does safe and sick leave accrual work?

Employees accrue safe and sick leave at the rate of 1 hour for every 30 hours worked, up to a maximum of 40 hours (or 56 hours as of January 1, 2021) of safe and sick leave each Calendar Year.

6. When can per diem or on-call employees use safe and sick leave?

Per diem or on-call employees who are covered by the Law can use safe and sick leave for:

- i. hours they were scheduled to work; or
- ii. hours they would have worked if they hadn't used leave.

For an absence from scheduled work, an employer should pay the employee what the employee would have earned if the employee had worked the scheduled shift.

Otherwise, the employer should base the amount of paid sick leave on the per diem hours the employee would have worked. This may be determined by:

- the hours the employee most recently worked for the employer in the past;
- the amount of work offered that the employee was unable to accept for a covered reason; or
- the number of hours worked by the person who filled the shift that day.

See the Rules for Safe and Sick Leave, Section 7-214(d).

Scenarios:

Laura's employer calls to offer her a four-hour per diem shift that same day to cover for a regular employee who is out sick. Laura responds that she feels sick and cannot work. Is her employer required to allow her to use accrued safe and sick leave?

Yes. Laura may use four hours of her accrued sick leave.

Maisie works for Paulie's Pub. Maisie is no longer available to work a regular schedule but is a dependable last-minute substitute worker for evening shifts, which run from 5 p.m. to 8 p.m. on weekdays and 7 p.m. to 9 p.m. on weekends. Recently, Maisie has been called in to work between three to five days per week, on weekdays and weekends. If Maisie is needed to cover an evening shift, Paulie, her employer, will usually call her about 2 p.m. in advance of the shift. On Tuesday at 12 p.m., Maisie called Paulie to let him know he shouldn't call her to work because she has to accompany her son to the emergency room. Is Paulie's Pub required to allow Maisie to use safe and sick leave? How much?

Yes. Maisie's employer must allow her to use at least three hours of sick leave.

Viktor works for Clay Creations. He has accrued 20 hours of safe and sick leave over the course of his employment. In the past few weeks, Viktor has been called in to teach pottery classes one or two times per week, for two hours each class. In the most recent workweek he was called in for one two-hour class. Today, Viktor called his boss to say he will be unable to work for the next two weeks and needs to use his accrued leave because he needs to care for his partner who is recovering from emergency surgery. Is Clay Creations required to allow Viktor to use safe and sick leave? How much?

Yes. Viktor's employer must allow him to use at least two hours of sick leave each week he is unable to work while caring for his partner for a total of at least four hours since Viktor most recently worked two hours in a week.

Scenarios (continued):

Felice's employer offers her a per diem shift five days before the day of that shift. Felice accepts the offer. The day after Felice accepts the offer, she schedules her annual physical for the same day and time as the work shift. Her employer has a policy requiring that employees provide seven days advance notice of a foreseeable need to use safe and sick leave. Is her employer required to allow her to use leave for sick leave purposes?

No. Felice was scheduled to work and did not comply with her employer's advance notice policy, so her employer is not required to grant her request for sick leave.

7. How do employees who are paid on a flat-rate basis (for example, paid by the piece) accrue safe and sick leave?

When employees are paid on a flat-rate basis, accrual of safe and sick leave is measured by the actual length of time spent performing work.

8. How do employees who are paid on a commission basis accrue safe and sick leave?

When employees are paid on a commission basis, accrual of safe and sick leave is measured by the actual length of time spent performing work.

9. How must an employer measure the use of safe and sick leave for employees with indeterminate shift lengths?

When employees have shifts of indeterminate length, the employer calculates safe and sick leave used based on the number of hours worked by the replacement employee for the same shift. If this method is not possible, the employer must base the number of hours of safe and sick leave on the hours worked by the employee when the employee most recently worked the same shift in the past.

10. Does an employee accrue safe and sick leave during a probationary period?

Yes. Covered employees begin to accrue safe and sick leave when they begin employment.

11. When can an employee start to use safe and sick leave?

Before September 30, 2020:

- Employees could start to use accrued sick leave on July 30, 2014 or 120 days after the start of their employment, whichever was later. They could start to use accrued safe leave on May 5, 2018 (when safe leave provisions took effect) or 120 days after the start of their employment, whichever was later.

As of September 30, 2020:

- Employees may use safe and sick leave as they accrue it. There is no longer a waiting period.

Exception: For employees who are able to accrue a maximum of 56 hours instead of 40 hours in a Calendar Year, employers do not have to allow them to use any accrued safe and sick leave over 40 hours until January 1, 2021.

Example: If an employee has accrued 40 hours of safe and sick leave by September 30, 2020 and continues to accrue leave, the employee can use up to 40 hours until December 31, 2020 but can only begin to use the additional accrued hours after January 1, 2021.

12. What happens to safe and sick leave that an employee has accrued but hasn't used at the end of the Calendar Year?

Employees can carry over to the next Calendar Year up to 40 or 56 hours of unused safe and sick leave. However, employers are only required to allow employees to use up to 40 or 56 hours of safe and sick leave per Calendar Year.

13. If an employee carries over 40 hours of unused safe and sick leave to a new Calendar Year, is an employer required to allow the employee to use 80 hours of safe and sick leave in the next Calendar Year?

No. Employers are only required to allow employees to use up to 40 or 56 hours of safe and sick leave per Calendar Year. If an employee accrues the maximum amount of 40 or 56 hours and uses fewer hours than the amount accrued during the course of a Calendar Year, then the employee can carry over to the next Calendar Year the remaining hours, up to a maximum of 40 or 56 hours, which will be available for immediate use.

Example: An employee accrues 40 hours of safe and sick leave in Calendar Year 1 and uses 20 hours of safe and sick leave in Calendar Year 1. She carries over to the next Calendar Year 20 hours, accrues 40 hours, and does not use any hours in Calendar Year 2. Her safe and sick leave balance at the end of Calendar Year 2 is 60 hours (20 hours from Calendar Year 1 plus 40 hours from Calendar Year 2). She may carry over to Calendar Year 3 only 40 of her 60 hours, and she accrues another 40 hours in Calendar Year 3. Her employer is only required to allow her to use 40 hours of her available 80 hours in Calendar Year 3.

14. Can an employer pay the employee for unused safe and sick leave instead of allowing the employee to carry it over?

Yes. An employer can choose—but is not required—to pay an employee for unused safe and sick leave at the end of the Calendar Year. An employer is not required to allow employees to carry over safe and sick leave if:

- The employer pays employees for the unused accrued safe and sick leave AND the employer frontloads the maximum of 40 or 56 hours, i.e., provides the employee with the maximum number of hours on the first day of the new Calendar Year. OR
- The employer frontloaded 40 or 56 hours of safe and sick leave at the beginning of the Calendar Year and will frontload 40 or 56 hours of safe and sick leave on the first day of the new Calendar Year.

An employer that switches from an accrual system to a frontloading system must pay out any unused accrued leave at the end of the year in which the safe and sick leave was accrued.

Scenario:

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

Yes. Paulina can use 40 hours of safe and sick leave right away—she carries over to the new Calendar Year the 40 hours of earned leave. However, Paulina's employer does not have to let her use more than 40 hours of safe and sick leave in the new Calendar Year even though Paulina may accrue up to 40 additional hours of safe and sick leave in the new Calendar Year.

15. Can an employee agree with an employer to be paid for safe and sick leave as it is accrued instead of only at the end of the Calendar Year?

No. The purpose of the Law is to ensure that employees can use safe and sick leave for permissible purposes. Paying employees for unused safe and sick leave before the end of the Calendar Year could leave employees with no safe and sick leave on days when employees need to use safe and sick leave and would undercut the purpose of the Law.

16. What is the advantage of carrying over safe and sick leave?

When an employee carries over to a new Calendar Year unused safe and sick leave, the employee can use it right away instead of waiting to accrue safe and sick leave in the new Calendar Year.

17. Can an employer have a policy that frontloads 40 or 56 hours of safe and 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 or 56 hours of safe and sick leave at the beginning of each Calendar Year. This option may be attractive to employers who prefer not to track the accrual of safe and sick leave for each covered employee. 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 safe and sick leave and use those hours at the beginning of the new Calendar Year.

18. Can an employer frontload accrual for part-time employees?

Yes. At the beginning of each Calendar Year, an employer can provide part-time employees with the hours of safe and sick leave they would accrue based on the hours they are anticipated to work at the accrual rate of 1 hour of safe and sick leave for every 30 hours the employee is anticipated to work. However, if the employer frontloads fewer than 40 or 56 hours, the employer must still track the employee's hours worked and accrual of safe and sick leave because a part-time worker may work more hours than anticipated.

If the employee works more hours than anticipated:

- The employer must allow the employee to accrue leave at the rate of 1 hour for every 30 hours worked until the total amount of frontloaded plus accrued safe and sick leave in a Calendar Year equals 40 or 56 hours. Employers who frontloaded fewer than 40 or 56 hours in a Calendar Year must allow a part-time employee to:
 - Use up to 40 or 56 hours of safe and sick leave in a Calendar Year if the employee accrued it. OR
 - Carry over to the new Calendar Year up to 40 or 56 hours of unused safe and sick leave. This carried over leave is in addition to the amount of frontloaded leave the employer expects the employee to earn in the new Calendar Year.

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 safe and sick leave and use those hours at the beginning of the new Calendar Year.

19. If an employer wants to frontload safe and sick leave for a full-time employee at the time of hire, must the employer frontload 40 or 56 hours of safe and sick leave if the employee is not projected to accrue 40 or 56 hours of safe and sick leave in the remainder of the employer's Calendar Year?

No. As long as the employer tracks accruals of safe and sick leave for the newly hired employee for the remainder of the Calendar Year, the employer would not need to frontload 40 or 56 hours. To avoid tracking accruals, however, the employer would need to frontload the full 40 or 56 hours.

20. Can an employer have a policy that permits employees to donate unused safe and sick leave to other employees?

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

21. How is safe and sick leave accrued 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, safe and 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, safe and sick leave accrues based on the employee's normal workweek.

22. How does safe and 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, safe and sick leave accrues during all hours worked, including overtime hours worked.

23. Does safe and 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?

Employers must base accrual and carryover for all employees on the Calendar Year unless the employer has a more generous policy that allows employees to accrue leave at a faster rate than the Law requires.

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

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

25. Can an employee who returns to the same employer within six months of separating access previously accrued safe and sick leave?

Yes. Unless the employer paid the employee for unused safe and sick leave when the employee left and the employee agreed to be paid out, the employee may access previously accrued safe and sick leave.

26. What is required of an employer who rehires an employee after a break in employment of more than six months?

If the employee's break in employment is more than six months, the Law does not require the employer to reinstate unused safe and sick leave. The employee would have a zero balance of accrued safe and sick leave on the first day of employment but would begin to accrue leave immediately.

27. If an employee is transferred to another division or location of the same employer in New York City, is the employee entitled to keep the safe and sick leave the employee accrued at the previous location?

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

28. If a covered business is sold to another employer, what happens to an employee's safe and sick leave?

The employee will retain unused safe and 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.

29. When must a successor employer provide employees with its safe and sick leave policies?

A successor employer must provide employees with its written safe and sick leave policies at the time of sale or acquisition or as soon as practicable thereafter. The policy must comply with the other notice requirements in the Law.

30. Do employers have to pay unused safe and sick leave to employees who leave employment?

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 safe and sick leave.

31. Can employers give employees more safe and sick leave than the amount required by the Law?

Yes. Employers may provide more generous leave than what is required by the Law.

32. Who decides how much safe and sick leave an employee can use?

As a general matter, it should be the employee who decides how much accrued safe and sick leave to use. However, employers can set a minimum daily increment of up to four hours.

33. Can an employer require an employee to use a minimum daily increment of safe and sick leave?

Yes. The Law allows employers to set a reasonable minimum increment for the use of safe and sick leave, but this minimum cannot be more than four hours per day unless otherwise permitted by state or federal law.

Scenarios:

Papa's Pizzeria requires employees to use a minimum of four hours of safe and sick leave each day that an employee uses safe and sick leave. Petra has accrued more than four hours of safe and sick leave. She calls a half hour before she is scheduled to work to say she feels sick and will be one hour late. Petra wants to use one hour of leave for sick leave purposes. Can she?

No. Papa's Pizzeria can require Petra to use four hours of safe and sick leave as the minimum increment.

Juan Carlos has accrued only three hours of safe and sick leave while working for Papa's Pizzeria. Can Papa's Pizzeria require Juan Carlos to use a minimum of four hours of safe and sick leave?

No. It would not be reasonable under these circumstances for Papa's Pizzeria to require Juan Carlos to use four hours of safe and sick leave as the minimum increment.

Anya works at Bank XYZ from 8:00 a.m. to 4:00 p.m. on Mondays. She schedules a doctor's appointment for 9:00 a.m. on a Monday and notifies her employer of her intent to use leave for sick leave purposes and report to work after the appointment. Bank XYZ's written safe and sick leave policies require employees to use a four-hour minimum increment of safe and sick leave per day. If Anya reports to work at 11:30 a.m., how many hours of safe and sick leave may Bank XYZ require her to use?

Even though Anya reported to work before 12:00 p.m., her employer can require her to use four hours of safe and sick leave.

34. If an employee uses more than four hours of safe and sick leave in a day, may the employer set fixed periods for further use of safe and sick leave after that increment?

Yes. The four-hour minimum daily increment only applies to the first four hours of safe and sick leave in a day. An employer may not require that an employee take subsequent time in four-hour increments. An employer may set fixed periods of 30 minutes or any smaller amount of time for the use of accrued safe and sick leave beyond the minimum increment and may require fixed start times for such intervals.

Scenarios:

Anya is scheduled to work at Bank XYZ from 8:00 a.m. to 4:00 p.m. on Mondays. She schedules a doctor's appointment for 9:00 a.m. on a Monday and notifies her employer of her intent to use leave for sick leave purposes and report to work after the appointment. Bank XYZ's written safe and sick leave policies require employees to use a four-hour minimum increment of safe and sick leave per day and to use leave in half-hour intervals that start on the hour or half-hour. After her doctor's appointment, Anya arrives to work at 12:17 p.m. How much safe and sick leave may Bank XYZ require Anya to use and at what time must she begin work?

Bank XYZ can require Anya to use four-and-a-half hours of her accrued safe and sick leave. Anya must begin work at 12:30 p.m.

Varun is scheduled to work from 9:00 a.m. to 5:00 p.m. on Friday. He learns that his daughter has a hearing on an order of protection scheduled for 10:00 a.m. on a Friday and notifies his employer of his intent to use safe and sick leave and return to work the same day. The employer's written safe and sick leave policies require employees to use a four-hour minimum increment of safe and sick leave per day and to use leave in half-hour intervals that start on the hour or half-hour. If Varun wanted to leave work at 9:40 a.m. to go to the 10:00 a.m. hearing, the employer could require the employee to stop work at 9:30 a.m. When must Varun return to work?

Varun must return to work at 1:30 p.m. because his employer requires that he use a four-hour minimum increment of safe and sick leave. If Varun arrives to work at 1:45 p.m., his employer can require him to use a half hour of time and begin work at 2:00 p.m. because the employer's safe and sick leave policies require employees to use safe and sick leave in half-hour intervals that start on the hour or half-hour.

35. If an employee gets sick in the middle of a scheduled vacation, can the employee use safe and sick leave?

No. The employee cannot use safe and sick leave for time spent on a vacation because the employee was not scheduled to work during the scheduled vacation.

36. Can employees use safe and sick leave during overtime that they were required to work?

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

37. Can an employee work additional hours or swap shifts instead of using safe and 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 safe and sick leave, if the safe and sick leave was foreseeable, or within the seven days after taking safe and sick leave. An employer cannot require an employee to work additional hours or swap shifts to make up for having used safe and sick leave.

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

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

No. An employer cannot require that an employee find a replacement employee as a condition of using safe and sick leave.

39. Can an employer require an employee to telecommute or work from home instead of taking safe and sick leave?

No. An employer cannot require an employee to work from home or telecommute instead of taking safe and sick leave. But an employer can offer the employee the options of working from home or telecommuting. An employee may voluntarily agree to work from home or telecommute instead of using safe and sick leave.

40. Can an employer require employees to provide advance notice of the need to use safe and sick leave?

Yes. An employer may require an employee to provide reasonable notice of the employee's foreseeable need to use safe and sick leave. Employers cannot require advance notice when there is an unforeseeable need to use safe and sick leave, unless advance notice is practicable under the circumstances.

41. Are employers required to have written safe and sick leave policies?

Yes. Employers must distribute written safe and sick leave policies personally when an employee begins employment with the employer, within 14 days of the effective date of any policy change, and upon employee request. The written safe and sick leave policies must explain at a minimum:

- The amount of safe and sick leave provided by the employer
- *If the employer uses an accrual system:* when accrual of safe and sick leave starts, the rate of accrual, and the maximum number of hours an employee may accrue in a Calendar Year
- The procedures that an employee must follow to provide notice to the employer of a need to use safe and sick leave
- All requirements for written documentation or verification of the use of safe and sick leave

- Any reasonable minimum increment and/or subsequent fixed interval for the use of accrued safe and sick leave
- Any policy regarding consequences for employee's failure or delay to provide required documentation
- Any policy regarding employee discipline for misuse of safe and sick leave
- The employer's policy regarding carryover of unused safe and sick leave at the end of the Calendar Year
- *If the employer uses a term other than "safe/sick time" or "safe and sick time" to describe leave provided by the employer:* a statement that employees may use the leave for safe and sick leave purposes without any conditions prohibited by the Law
- A statement that the employer cannot require that employees, or a healthcare or service provider, disclose personal health information or the details of the matter for which an employee requests leave under the Law, and that the employer must keep information about an employee or an employee's family member obtained solely because of use of safe and sick leave confidential unless the employee consents to disclosure in writing or disclosure is required by law

An employer's written safe and sick leave policies must meet or exceed all of the requirements and restrictions under the Law. An employer may not distribute the Notice of Employee Rights as required by the Law in lieu of maintaining, distributing, or posting written safe and sick leave policies.

42. Can employers have other policies about time off that satisfy the requirements of the Law?

Yes. Employers can provide leave benefits that aren't called safe and sick leave benefits as long as the time off meets or exceeds all of the requirements of the Law and employees can use leave for the same safe and sick leave purposes permitted under the Law.

Example: Some employers give employees a bank of paid time off for any purpose: vacation, sick leave, personal leave, etc. These employers do not have to provide additional time designated specifically as safe and sick leave if employees can use the days in the bank for safe and sick leave purposes and the employer's written policies meet all of the Law's requirements.

If an employee has already accrued leave under a leave policy that was in existence prior to the effective date of the Law, accruals may still be subject to the requirements of New York State Labor Law § 198-c regarding benefits and wage supplements. For further guidance regarding leave policies under New York State Labor Law, contact the New York State Department of Labor, Division of Labor Standards.

43. When will an employer's written policies about time off meet the requirements of the Law?

A policy will meet or exceed the Law's requirements and, therefore, be permissible under the Law if it:

- Allows employees to take leave as unpaid or paid safe and sick leave (whichever type applies to the employer depending on its size and/or net income).
- Allows employees to accrue at least 1 hour of safe and sick leave for every 30 hours worked or provides employees with 40 or 56 hours of safe and sick leave at the beginning of the Calendar Year.
- Allows employees to use up to 40 or 56 hours of accrued safe and sick leave in a Calendar Year.
- Allows employees to use up to 40 or 56 hours of accrued safe and sick leave for the same reasons and under the same conditions that safe and sick leave can be used under the Law.
- Does not impose limitations, conditions, or requirements on the use of safe and sick leave beyond those allowable under the Law.
- Allows employees to carry over up to 40 or 56 hours of unused safe and sick leave to the next Calendar Year unless the employer uses a frontloading system and pays out employees for unused safe and sick leave at the end of each Calendar Year.
- Provides that employees are paid at least their regular hourly rate but no less than the New York State minimum wage for paid safe and sick leave.
- Allows employees to use safe and sick leave without retaliation, such as threats, discipline, demotion, reduction in hours, or termination.

44. How must an employer provide written safe and sick leave policies to employees?

Employers must distribute written safe and sick leave policies personally when an employee begins employment with the employer, within 14 days of the effective date of any policy change, and upon employee request. An employer may not distribute the Notice of Employee Rights in lieu of distributing or posting written safe and sick leave policies.

45. If an employer requires an employee to provide advance notice of the need to use safe and sick leave, must the employer explain this requirement in their written safe and sick leave policies?

Yes. An employer that requires advance notice must provide employees with a written policy explaining procedures for giving notice.

Example: An employer can require an employee to call a designated phone number at which an employee can leave a message. An employer's notice policy must be reasonable, taking into account whether the need for safe and sick leave is foreseeable or unforeseeable.

46. Can an employer make exceptions to its written safe and sick leave policies?

Yes. Employers can make exceptions to their written safe and sick leave policies for individual employees provided that they are more generous to the employee than the terms of the employer's written policy.

47. Can an employer provide a more generous leave policy to some employees and not others?

Yes. The Law provides minimum safe and sick leave requirements that apply to covered employees. The Law also expressly encourages employers to provide more generous leave benefits. As long as an employer gives all employees at least the benefits to which they are entitled under the Law, the employer is not prohibited from providing only one group of employees—for example, only full-time employees—with more generous leave benefits. However, employers must ensure that its policies do not violate any other laws or regulations that may apply, including anti-discrimination laws and regulations.

48. What is a foreseeable use of safe and sick leave? What amount of notice can an employer require for foreseeable uses of safe and sick leave?

A foreseeable use of safe and sick leave occurs when the employee is able to predict or know in advance that the employee will need to use safe and sick leave, such as a scheduled doctor's visit or court appointment.

If the need for safe and sick leave is foreseeable, the employer can require up to seven days' advance written notice of an employee's intention to use safe and sick leave, and the employer's written policy must describe how employees must provide notice.

49. What is an unforeseeable use of safe and sick leave? What policy can an employer have for unforeseeable uses of safe and sick leave?

An unforeseeable need for *sick leave* occurs when employees require time to care for, or obtain medical treatment for, themselves or a family member in a situation that was not reasonably anticipated.

Example: An employee wakes up in the morning with a fever and does not feel well enough to report for work that morning. This is an unforeseeable need for sick leave.

An unforeseeable need for *safe leave* occurs when employees require time to seek assistance or take other safety measures for themselves or a family member in a situation that was not reasonably anticipated.

Example: On her way to work, an employee believes she is being followed by her estranged ex-husband against whom she has a protective order and goes to the nearest police station rather than her office. This is an unforeseeable need for safe leave.

50. If an employee's need to use safe and sick leave is unforeseeable, when and how must an employee notify the employer?

If the need for safe and sick leave is unforeseeable, the employer may require an employee to give notice as soon as practicable. An employer must include in its written safe and sick leave policies the procedure for providing notice of an unforeseeable use of safe and sick leave, and the procedure must be reasonable.

Example: Reasonable procedures may include instructing the employee to call a designated phone number where the employee can leave a message, following a uniform call-in procedure, or using another reasonable and accessible means of communication to inform the employer. The procedures for providing notice of an unforeseeable need for safe and sick leave may not

include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using the leave.

An employer must consider the individual facts and circumstances of each situation in determining at what point it is practicable for an employee to give notice.

51. Can an employer deny safe and sick leave or payment of safe and sick leave to an employee who does not provide notice of the need to use leave?

Yes. However, an employer cannot deny safe and sick leave or payment for safe and sick leave to an employee who fails to give reasonable notice if the employer did not distribute written safe and sick leave policies that describe the steps that an employee must take to provide notice of the need to use safe and sick leave. And the employer cannot deny safe and sick leave or payment for safe and sick leave if the notice the employer required was not reasonable under the circumstances.

Scenarios:

Edda schedules a doctor's appointment a week ahead of time, but forgets to let her employer, Security Co., know about it until a day in advance. Security Co.'s reasonable written policy requires seven days' advance notice for foreseeable absences. Can Edda's employer deny use of safe and sick leave when the absence was foreseeable and Edda did not provide adequate notice in accordance with the employer's reasonable written policy?

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 safe and sick leave.

Employer Manufacturing Inc. has a written policy requiring employees to provide at least three days' advance notice to use safe and sick leave. Theresa calls out of work one night because she needs to care for her granddaughter while her daughter files a police report on a family offense matter. Can the employer deny Theresa leave because of her failure to provide three days' advance notice of her need to use safe and sick leave?

No. Theresa's need for safe and sick leave was unforeseeable, and she gave notice of the need to use leave for safe leave purposes as soon as practicable. Manufacturing Inc.'s safe and sick leave policies did not meet the Law's minimum requirements regarding unforeseeable uses of safe and sick leave.

52. Can an employer require an employee to disclose the reason for using safe and sick leave?

No. An employer cannot require an employee or the person providing documentation—for example, the employee's health care or social service provider—to disclose the reason for the use of safe and sick leave, except as required by law or with the employee's written consent.

The employer can:

- Require a note from a licensed medical provider after more than three consecutive workdays of sick leave, attesting to both the existence of a need for sick leave and the amount of work hours or days used as sick leave.
- Require documentation from a social service provider, legal service provider, or member of the clergy, or a copy of a police report, court record, or a notarized letter written by the employee indicating the need for safe leave after more than three consecutive days of safe leave.
- Ask for a date on which the employee is cleared to return to work.
- Ask the employee to submit written verification that the employee used safe and sick leave for safe and sick leave purposes.⁹

Scenario:

Eun tells her supervisor that she needs three days of leave. She shows her supervisor a letter from her social worker stating that Eun was a victim of a human trafficking crime, and she needs time to handle housing and legal matters. Can Eun’s supervisor require her to provide more information about her need to take safe leave?

No. Eun has provided a letter from a social service provider explaining her need to take leave to handle matters related to being a victim of a human trafficking crime. Eun’s employer may not request any more information about her need to take leave.

53. Can an employer require an employee using sick leave to provide documentation from a licensed health care provider?

Yes, but only if the employee uses more than three consecutive workdays* as sick leave and only if that requirement is part of written sick leave policies that the employee received prior to using the sick leave.

The employer can require the employee to provide written documentation signed by a licensed health care provider confirming both:

- i. the need for the amount of sick leave taken; and
- ii. that the use of sick leave was for a purpose authorized under the Law.

The Law prohibits employers from requiring the health care provider to specify the medical reason for sick leave, though disclosure may be required by other laws.

*“Workdays” means the days or parts of days the employee was scheduled to work had the employee not used sick leave.

⁹ A model form that employers can use to verify use of safe and sick leave is available at nyc.gov/workers

54. Who pays for the documentation when the employer requires sick leave documentation after more than three days of use?

Employers must reimburse employees for fees charged by health care providers for sick leave documentation the employer requested.

55. Can an employer require an employee using safe leave to provide documentation?

Yes, but only if the employee uses more than three consecutive workdays of safe leave and only if that requirement is part of written safe leave policies that the employee received prior to using the safe leave.

Reasonable documentation may include a document from a social service provider, legal service provider, or member of the clergy, a copy of a police report, court record, or a notarized letter written by the employee indicating the need for safe leave. The documentation need only verify that there is a need to take safe leave.

An employer may not require an employee to provide the specific details of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking for which the employee needs to take safe leave.

56. Who pays for the documentation when the employer requires safe leave documentation after more than three days of use?

Employers must reimburse employees for all reasonable costs for safe leave documentation the employer requested.

57. How much time must an employer give an employee to submit written documentation if that employee used more than three consecutive days of safe and sick leave?

If an employer requires an employee to submit written documentation, the employee has seven days from the date the employee returns to work to submit the documentation.

58. Can an employer require documentation if the safe and sick leave is three consecutive workdays or less?

No. An employer can ask the employee to submit written verification that the employee used safe and sick leave for safe and sick leave purposes but *cannot require documentation when the employee uses three consecutive workdays or less for safe and 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 per day on Monday, Tuesday, Wednesday, and Friday. One week, he uses sick leave on each of 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.

59. Can an employer require the employee to confirm in writing that the employee used safe and sick leave as permitted under the Law?

Yes. An employer can require the employee to confirm in writing that the employee used safe and sick leave for permitted purposes. However, the employer cannot require the employee to provide documentation from a medical or service provider if the employee did not use safe and sick leave for more than three consecutive workdays.

60. Can an employer require a second opinion to verify that the documentation is valid?

No. If the employee provides documentation, the employer cannot require a second opinion.

61. Can an employer require an employee to specify the nature of the health condition or the act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking matter causing the employee to use safe and sick leave?

The Law does not require disclosure. Under the Law:

- An employer cannot require employees or their health care providers to specify the nature of an employee's or employee's family member's injuries, illness, or condition, except as required by other laws.
- An employer cannot require an employee to provide the specific details of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking for which the employee needs to take safe leave.

As noted, disclosure may be required by other laws.

62. Do employers have to keep information about their employees' need to take safe and sick leave confidential?

Yes. An employer must keep information about an employee or an employee's family member obtained solely because of the Law confidential unless the employee consents to disclosure in writing or disclosure is required by other laws.

The employer may consider the information if an employee requests a "reasonable accommodation" as the victim of domestic violence, a sex offense, or stalking under the New York City Human Rights Law.¹⁰

63. Can an employer discipline an employee who misuses safe and sick leave?

Yes. An employer may take disciplinary action, up to and including termination, against an employee who uses safe and sick leave for purposes other than those provided for under the Law. However, a mistaken use of safe and sick leave does not qualify as misuse and is protected from retaliation.

¹⁰ For more information about the Human Rights Law, visit the New York City Commission on Human Rights website nyc.gov/humanrights

64. What are signs of possible misuse of safe and sick leave?

Indications of using safe and sick leave for purposes other than those described in the Law include, but are not limited to, a pattern of:

- Using unscheduled safe and sick leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation, or payday.
- Taking leave on days when other leave has been denied.
- 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 permitted uses of safe and sick leave under the Law may also indicate misuse of safe and sick leave.

V. HOW SAFE AND SICK LEAVE IS PAID

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

When an employee uses paid safe and sick leave, the employer must pay the employee what the employee would have earned for the amount of time and the type of work the employee was scheduled to perform at the time the safe and sick leave is taken.

Under no circumstance can an employer pay an employee for safe and sick leave at less than the full minimum wage under New York State minimum wage laws and regulations.¹¹

2. If an employee uses safe and 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 for safe and sick leave used.

3. How much does an employer have to pay an employee for paid safe and sick leave if the employee is paid a tipped wage, i.e., less than the legal minimum wage on the expectation they earn tips?

The employer must pay the employee at least the full minimum wage, without any allowance or credit for tips or otherwise, for each hour of safe and sick leave used.

4. Are employees entitled to tips they would have earned during safe and sick leave?

No. Employees are not entitled to lost tips or gratuities during use of safe and sick leave.

5. Does the employer have to consider the employee's bonus in calculating the employee's rate of pay for paid safe and 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 when determining the employee's rate of pay for safe and sick leave purposes.

6. If an employee is paid in cash and supplements, as defined in section 220(5)(b) of New York State Labor Law, must the employer pay cash instead of supplements when the employee uses safe and sick leave?

No.

¹¹ For information about minimum wage rates, visit the New York State Department of Labor website labor.ny.gov and search "Minimum Wage."

7. Will the payment of cash instead of supplements, as defined in section 220(5)(b) of New York State Labor Law, relieve the employer from complying with the Law?

No. The employer must comply with the Law regardless of the manner in which the employee is paid.

8. If an employee has two different jobs for the same employer, or if an employee's rate of pay fluctuates for the same job, what should the rate of pay be for safe and sick leave used?

The rate of pay should be what the rate of pay would have been during the time that the employee was scheduled to work when the employee used the safe and sick leave.

Scenario:

Diep works for a clothing store. She works as a cashier three hours in the morning for \$10 per hour. The remaining five hours of the day she manages the store's back office for \$15 per hour. Diep is scheduled to work eight hours on Saturday. She takes the day off for a safe leave matter. How much is the clothing store required to pay for her eight hours of safe and sick leave?

The clothing store must pay Diep \$10 per hour for the first three hours of leave (\$30) and \$15 per hour for the next five hours of leave (\$75), for a total of \$105.

9. 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 safe and sick leave during these additional voluntary hours, how much should the employee be paid?

Employees who volunteer to work hours in addition to their normal schedule would be paid at their normal pay rate if they take safe and sick leave.

10. How much does an employer have to pay an employee for safe and sick leave if the employee's salary is paid by commission?

If an employee is paid by commission (whether base wage plus commission or commission only), the employer must pay the employee for safe and sick leave at an hourly rate that is the base wage or the minimum wage, whichever is greater.

11. How much does an employer have to pay an employee for paid safe and sick leave if the employee is paid at a flat rate regardless of the number of hours worked?

The employer must add together the employee's total earnings, including tips, commissions, and supplements, for the most recent workweek in which the employee *did not* take paid safe and sick leave, and divide the total by the number of hours the employee worked in that week, or 40 hours, whichever number is less. In doing this calculation, the employer should consider workdays to mean the days or parts of days the employee worked. In no event can the rate of pay for piecework be less than the minimum wage.

12. How should an employer determine the amount of safe and sick leave that must be paid when an employee has jobs, assignments, projects, or shifts of varying or indeterminate lengths?

For work or shifts of an indeterminate length (e.g., shift until “closing” instead of a specified end time or a job that lasts until the required work is completed), employers should base the hours of safe and sick leave used and paid on the hours worked by a replacement employee for the same shift. If there is no replacement employee, employers should base the hours of safe and sick leave on the hours worked by the employee or a similarly situated employee in the same or similar shift in the past.

13. How soon must employees be paid after they take paid safe and sick leave?

An employee must be paid no later than the payday for the next regular payroll period beginning after the employee took paid safe and sick leave. However, if the employer has asked for written documentation or verification of use of safe and sick leave from the employee, the employer is not required to pay for safe and sick leave until the employee has provided the requested documentation or verification.

An employer cannot delay payment of safe and sick leave beyond the next regular payroll period beginning after the employee took paid safe and sick leave if the employer’s written safe and sick leave policies do not include the requirement that employees provide documentation for more than three consecutive workdays of safe and sick leave, the time and manner in which the employee must provide documentation, and the consequences for not providing it.

14. Can an employer deduct money from an employee’s wages to cover the cost of paid safe and sick leave?

No. An employer required to provide paid safe and sick leave cannot require an employee to pay for all or part of that leave.

VI. RETALIATION

1. Can an employer penalize an employee for using safe and sick leave?

No. Retaliation is illegal. No person—including but not limited to an employer—can retaliate against employees or prevent them from exercising or attempting to exercise rights under the Law, including by:

- Requesting and using safe and sick leave.
- Filing a complaint with DCWP for violations of the Law.
- Communicating with any person, including coworkers, about any violation of the Law.
- Participating in an administrative or judicial action regarding any violation of the Law.
- Informing another person of that person’s rights under the Law.

2. What is retaliation?

Retaliation is any act that penalizes an employee for, or is reasonably likely to deter an employee from, exercising rights under the Law. It can include threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee’s exercise of rights under the Law, blacklisting, and maintenance or application of an absence control policy that counts safe and sick leave as an absence that may lead to or result in an adverse action.

Retaliatory acts include actions related to an employee's perceived immigration status or work authorization.

An employee does not have to explicitly refer to a specific section of the Law in order to be protected from retaliation. The Law's anti-retaliation provision applies even if the employee mistakenly but in good faith asserts or exercises rights under the Law. And retaliation can be shown when an employee's exercise or attempted exercise of rights motivated the employer to take the retaliatory action, even if other factors may also have motivated the employer.

Scenario:

Cara has been working for Great Supermarket for three years and never received a Notice of Employee Rights or her employer's written safe and sick leave policies. She asks her manager about whether she can be paid for a week off because she needs oral surgery. Her manager tells her no, and they have a short verbal disagreement. The next day, Cara is fired and told it's because of insubordination the previous day. Could this be retaliation?

Yes. Cara attempted to exercise her right to paid safe and sick leave, and her employer punished her with termination because of that attempt. Her request to use sick leave motivated her employer to fire her.

VII. EMPLOYER RECORDS

1. What records must an employer keep?

Employers should keep their current and past written safe and sick leave policies.

Employers must keep and maintain records—including employment, payroll, and timekeeping records—documenting their compliance with the requirements of the Law, specifically those records that show, for each employee:

- Name, address, phone number, start date of employment, end date of employment (if applicable), rate of pay, and whether the employee is exempt from the overtime requirements of New York State Labor Law and related regulations
- Hours worked each week (unless the employee is exempt from the overtime requirements of New York State Labor Law and related regulations and has a regular workweek of 40 or more hours)
- Date and time of each instance of safe and sick leave used, and the amount paid for each instance
- Any change in the material terms of employment specific to the employee
- Date that the Notice of Employee Rights was provided to the employee and proof that it was received by the employee

2. How long must employers keep records required under the Law?

Employers must keep and maintain records for at least three years, unless otherwise required under other laws.

3. When must employers make records available to DCWP?

An employer under investigation by DCWP must provide requested records within 14 days of DCWP's Notice of Investigation.

4. What are the consequences of an employer's failure to maintain or produce records following a request by DCWP?

An employer's failure to maintain or produce a record that is required to be maintained under the Law may subject the employer to civil penalties and, if relevant to a material fact alleged by DCWP in an enforcement proceeding, may create a reasonable inference that the fact is true.

5. 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 by DCWP and as long as employees' or their family members' health or other sensitive information obtained solely because of the Law is kept confidential, unless the employee permits disclosure or disclosure is required by other laws.

6. If an employer provides employees with leave benefits that exceed the Law's requirements, must the employer maintain records?

Yes. Employers must maintain records documenting compliance with the Law, including if the employer complies with the Law by providing even more benefits than what the Law requires.

7. Are the Law's recordkeeping requirements the same as those in other state laws (e.g., New York State Labor Law) or federal laws (e.g., Internal Revenue Code) that apply to employers?

No. The City Law requires employers to maintain records documenting compliance with the City Law for three years. Employers must comply with other laws and rules that apply to their businesses and their recordkeeping practices.

VIII. COMPLAINTS AND ENFORCEMENT

1. Can employees file complaints with DCWP?

Yes. Employees can file complaints with DCWP if they believe their rights under the Law have been violated. The complaint form is available online at nyc.gov/workers or by contacting 311 (212-NEW-YORK outside NYC).

Employees can also call 311 and ask to be transferred to a DCWP representative to assist them in filing a complaint over the phone.

2. Is there a deadline for employees to file complaints with DCWP?

Employees must file their complaint within two years of the date they knew or should have known of the violation(s) they allege.

3. Does DCWP have to investigate all complaints?

Yes. The Law requires DCWP to investigate all complaints it receives.

4. Must employers respond to complaints?

Yes. If an employee files a complaint with DCWP, DCWP will contact the employer to request documents, information, and other responses to the investigation. The employer has 14 days to respond.

5. What does DCWP do with complaints?

DCWP investigates complaints to identify any potential violations of the Law. This generally involves collecting information from the employee, the employer, and any other parties that may have relevant information. If, as a result of its investigation, DCWP believes a violation has occurred, DCWP works with the employer to come into compliance and attempts to resolve the case without further enforcement proceedings, including court proceedings.

If DCWP and the employer are unable to reach a resolution, DCWP may pursue appropriate remedies by initiating a proceeding at the New York City Office of Administrative Trials and Hearings (OATH).

6. Does DCWP keep employees' identities confidential?

Yes. DCWP keeps the identity of complainants *and witnesses*—including people who provide information to DCWP who are not complainants—confidential unless disclosing their identity is necessary to resolve the investigation or is otherwise required by law. DCWP will notify complainants before disclosing their identity whenever possible.

7. Does my immigration status affect my ability to file a complaint?

No. All workers have the same rights and protections under the Law, regardless of immigration status. DCWP does not collect any information about a complainant's immigration status to pursue a complaint.

8. Does DCWP conduct routine, unannounced inspections of employers?

No. The Law allows DCWP to conduct on-site employer visits upon 30 days' notice, unless the employer agrees to a lesser amount of time. In general, inspections will be conducted at a mutually agreeable time of day.

Exceptions:

DCWP may conduct on-site inspections without 30 days' notice in certain limited circumstances. These include circumstances when DCWP has reason to believe:

- An employer will destroy or falsify records.
- An employer is about to declare bankruptcy or is otherwise disposing of its assets.
- An employer is the subject of a labor-related government investigation or enforcement action.
- The employer is engaging in retaliation.

If the employer does not respond to two attempts by DCWP to arrange a mutually agreeable time of day, DCWP may set a time for an inspection upon two days' advance notice.

9. Can DCWP conduct safe and sick leave investigations on its own initiative?

Yes. The Law authorizes DCWP to conduct an investigation on its own initiative when it has reason to believe that an employer's practices warrant investigation. DCWP does not need to have an employee complaint in order to begin an investigation.

10. Can DCWP issue subpoenas?

Yes. DCWP may issue subpoenas to investigate an employer's compliance with the Law. When a subpoena is issued, DCWP must give 30 days' written notice that the employer must provide DCWP with access to its records. DCWP may give less than this amount of notice in the limited circumstances described in FAQ 8 in this section.

11. Can DCWP issue violations for failing to respond to an investigation?

Yes. DCWP may bring a proceeding at OATH against an employer who fails to respond to an investigation, or fails to provide information, records, or access to records requested by DCWP in connection with an investigation. An employer will have opportunities to comply by producing the requested information or records, and will face reduced or no civil penalties if it does so before the first scheduled appearance date at OATH.

12. After DCWP brings a proceeding at OATH, do employers still have an opportunity to settle?

Yes. DCWP and the employer may settle at any point after an enforcement proceeding is filed at OATH.

13. What happens if an employer chooses not to settle violations and have charges heard before OATH?

An Administrative Law Judge (ALJ) from OATH's Trials Division hears testimony from DCWP, the employer, and any witnesses. Under the Law, the ALJ 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 safe and sick leave but wasn't paid or \$250, whichever is greater
- \$500 for each time the employee was unlawfully denied safe and 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 safe and sick leave taken without mutual consent of the employer and the employee
- Full compensation, including lost wages and benefits, damages of \$500 to \$2,500, and appropriate equitable relief for each time the employer retaliated against the employee for taking safe and sick leave

Following a trial, OATH issues recommended decisions that are reviewed by DCWP's Commissioner who has the authority to issue a final decision.

14. What are the maximum penalties for violations of the Law?

In addition to the monetary relief that an employer may be required to pay to employees whose rights were violated, the Law also provides the following civil penalties for violations of the Law:

- Up to \$500 for failure to timely or fully respond to DCWP's request for information or documents before the first scheduled appearance date
- Up to \$500 per employee for each first-time violation
- Up to \$750 per employee for each second violation within two years of a prior violation
- Up to \$1,000 per employee for each subsequent violation that occurs within two years of any previous violation
- Up to \$50 for each employee who was not given the required Notice of Employee Rights

15. What happens if the employer has an official or unofficial policy or practice of not providing or refusing to allow the use of safe and sick leave as required under the Law?

The finding that an employer has such a policy or practice constitutes a violation of the Law for each and every employee affected by the policy. For each employee who was affected by such a policy, the employer may be liable for payment of both monetary relief and civil penalties. In other words, there is no need to show that each employee was specifically denied safe and sick leave in at least one instance.

16. What happens if an employer does not allow accrual of safe and sick leave as required by the Law?

The relief granted to each and every employee affected by the policy or practice will include either:

- i. addition of 40 hours of leave to the employee's safe and sick leave balance; or
- ii. *(if the number of hours denied to the employee is known)* addition of the number of hours of leave the employee should have accrued to the employee's safe and sick leave balance, provided that the balance does not exceed 80 hours.

17. 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 Law. However, employees retain any other rights they may have under other local, state, or federal laws.

18. Can anyone besides DCWP bring an action in court to enforce employees' rights under the Law?

Yes. The Law authorizes the New York City Law Department (or its designee) to file cases against employers in state court. Such cases may be brought to:

- mandate the employer's compliance with the Law;
- obtain injunctions; and
- force the employer to stop any acts or practices that are unlawful under the Law.

The Law also authorizes the New York City Law Department (or its designee) to file cases in state court against employers that have a pattern or practice of violating the Law. Such cases may be brought to seek:

- monetary relief;
- civil penalties;
- injunctive relief; and
- any other appropriate relief.

In exercising this authority, the New York City Law Department (or its designee) has the power to issue subpoenas to employers for information, records, and testimony.

IX. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE

1. Does New York State also require employers to provide safe and sick leave?

Yes. As of September 30, 2020, New York State requires covered employers to provide paid or unpaid safe and sick leave to covered employees.

Employers with 4 or fewer employees:

- must provide up to 40 hours of *unpaid* safe and sick leave if the employer had a net income of less than \$1 million in the previous tax year.
- must provide up to 40 hours of *paid* safe and sick leave if the employer had a net income of \$1 million or more in the previous tax year.

Employers with 5 or more employees regardless of income:

- must provide up to *40 hours* of paid safe and sick leave.

Employers with 100 or more employees regardless of income:

- must provide up to *56 hours* of paid safe and sick leave.

2. Is there a difference between the City Law and the State Law?

Yes. The two laws are similar but not identical, and you should consult your legal advisor with any specific questions.

In general, similarities include:

- the amount of leave employees must get based on the employer's size and/or net income; and
- the reasons employees can use leave.

Many other important elements are the same in both laws.

The City Law must remain as good as or better than the State Law. In fact, the City Law specifically provides that any future standards in the State Law that surpass those in the City Law will be automatically adopted and incorporated in the City Law.

3. If the City Law and the State Law are so similar, who enforces safe and sick leave laws in New York City?

DCWP and the New York State Department of Labor have overlapping enforcement authority when it comes to safe and sick leave benefits for covered employees in New York City.

4. Are there leave benefits under the Family Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA) (federal laws) and New York State Human Rights Law?

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

5. Is the City Law the same as the federal Family and Medical Leave Act (FMLA)?

No. Although both laws have to do with leave, FMLA provides qualified employees with 12 weeks of job-protected unpaid leave for specific purposes. FMLA only applies to employers that meet certain criteria, and only eligible employees are entitled to take FMLA leave.¹²

6. Is the City Law the same as the New York State Paid Family Leave Law (PFL)?

No. PFL provides qualified employees with 8 weeks of partially paid leave to:

- Bond with a newly born, adopted, or fostered child.
- Care for a close relative with a serious health condition.
- Assist loved ones when a family member is deployed abroad on active military service.

The length and monetary amount of leave change every year.¹³

7. Can an employee's use of safe and sick leave be counted toward leave under other laws?

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

8. What about overlapping jurisdiction between federal and state laws and City Law—which would take precedence?

Federal and state laws take precedence when they require employers to do more than the City Law does.

Examples:

- Depending on the facts in a particular situation, under FMLA, an employer may be required to provide intermittent time off in increments of time that are less than four hours.
- Depending on the facts in a particular situation, under ADA or New York State Human Rights Law, an employer may be required to provide a leave of absence to an employee with a disability that is longer than the amount of safe and sick leave an employer must provide under the City 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 City 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 City Law.

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

¹² For more information about FMLA, visit the U.S. Department of Labor website dol.gov/whd

¹³ For more information on New York State Paid Family Leave, visit paidfamilyleave.ny.gov