

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

No.

**11. Can an employer require an employee to telecommute or work from home instead of taking sick leave?**

No. An employer cannot require an employee to work from home or telecommute instead of taking sick leave. But an employer can offer the employee the options of working from home or telecommuting. If employees voluntarily agree to work from home or telecommute, employees would retain the paid or unpaid sick leave that they have accrued.

**12. Can an employer require employees to provide advance notice of the need to use sick leave?**

If the need is foreseeable, the employer can require up to seven days advance notice of an employee's intention to use sick leave. If the need is unforeseeable, the employer may require an employee to give notice as soon as practicable. Whether and when an employee can practicably provide notice depends upon the individual facts and circumstances of the situation.

**Scenario:**

**An employee schedules a doctor's appointment a week ahead of time, but forgets to let the employer know about it until a day in advance. The employer's policy requires seven days advance notice for foreseeable absences. Can the employer deny use of paid sick leave because the absence was foreseeable and the employee did not provide adequate notice?**

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 sick leave.

**13. Can an employer require an employee to disclose the medical reason for using sick leave?**

No. An employer cannot require an employee or an employee's health care provider to disclose details of the employee's or employee's family member's injury, illness, or condition that required the use of sick leave, except as required by law.

**14. Can an employer require an employee to provide documentation from a licensed health care provider?**

Yes, but only if the employee uses more than three consecutive workdays as sick leave. The employer can require the employee to provide a note from a licensed health care provider confirming the need for the amount of sick leave taken. The law prohibits employers from requiring the health care provider to specify the medical reason for sick leave. Disclosure may be required by other laws. See VII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME on page 17.

If an employer requires an employee to provide documentation when the employee uses or plans to use sick leave in excess of three days, the employee is responsible for the cost not covered by insurance or any other benefit plan.

**15. Can an employer require documentation if the sick leave is not for more than three full days?**

An employer can require documentation if the employee uses more than three consecutive workdays as 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 on Monday, Tuesday, Wednesday, and Friday. He uses sick leave for 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.

**16. Can an employer require the employee to provide written confirmation that the employee used sick leave under the law?**

Yes. However, the employer cannot require the employee to provide documentation from a medical provider if the employee has not used sick leave for more than three consecutive workdays.

**17. Can the employer require a second opinion to verify that the documentation is valid?**

No. If the employee provides documentation from a licensed health care provider, the employer cannot require a second opinion.

**18. Does an employer have to keep medical information about employees confidential?**

Yes. An employer must keep health information about an employee or an employee’s family member obtained solely because of this law confidential unless the employee permits disclosure or disclosure is required by law.

**19. Can an employer discipline an employee who misuses sick leave?**

Yes, but only if an employee uses sick leave for a purpose other than those set forth in the law.

**20. What are possible signs of misuse of sick leave?**

Indications of using sick leave for purposes other than those described in the law include, but are not limited to:

- Repeated use of unscheduled sick leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation, or pay day
- Taking leave on days when other leave has been denied
- A pattern of 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 the employee being sick or with the employee using sick leave for a preventative medical appointment may also indicate misuse of sick leave.



## **V. RATE OF PAY FOR SICK LEAVE**

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

When an employee uses paid sick leave, an employer must pay the employee the employee's regular hourly rate at the time the sick leave is taken. Employees cannot be paid less than the *full* minimum hourly wage provided for under [Section 652\(l\)](#) of the New York State Labor Law. As of December 31, 2013, the New York State minimum wage is \$8 per hour. It will increase to \$8.75 per hour on December 31, 2014 and to \$9 per hour on December 31, 2015. For updates and other information on the minimum wage, go to [labor.ny.gov](http://labor.ny.gov) and search "Minimum Wages."

### **2. If an employee uses 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.

### **3. How much does an employer have to pay an employee for paid sick leave if the employee's salary is based on tips or gratuity?**

The employer must pay the employee at least the full minimum wage, which is \$8 an hour as of December 31, 2013.

### **4. Are employees entitled to tips that would have been earned during sick leave?**

Employees are not entitled to lost tips during use of sick leave if their regular rate of pay is greater than \$8 per hour.

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

### **6. If an employee has two different jobs for the same employer or the employee's rate of pay fluctuates for the same job, what should the rate of pay be for sick leave?**

The rate of pay should be what the rate of pay would have been during the time that the employee used the sick leave.

### **7. 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 sick leave during these additional voluntary hours, how much should the employee be paid?**

Under the law, employees who volunteer to work hours in addition to their normal schedule would be paid at their normal pay rate if they take sick leave.

## **VI. OTHER TIME OFF POLICIES**

### **1. Can other time off policies satisfy the requirements of the law?**

Yes, as long as the time off meets or exceeds the requirements of the law and can be used for the purposes of sick leave. For example, some employers allow employees paid time off for other purposes, such as vacation or personal leave. The employer does not have to provide additional time designated for sick leave if the vacation or personal leave days can be used for sick leave and the employer's policies meet the other requirements of the law.

### Scenario:

**Laces Shoe Store provides its employees with 40 hours of paid vacation time but no sick leave. Do they need to provide sick leave?**

No. Laces Shoe Store does not need to provide sick leave in addition to the 40 hours of paid vacation that they already provide employees, but the store must allow employees to use the vacation time as they would sick leave under the law and otherwise must comply with the law's requirements.

## 2. When will an employer's time off policy meet or exceed the requirements of the law?

A policy will meet or exceed the law's requirements and be permissible under the law if the policy **at a minimum:**

- Provides that leave can be taken as *paid* sick leave if the employer has five or more employees who work more than 80 hours a calendar year in New York City and provides *unpaid* sick leave if the employer has one to four employees who work more than 80 hours a calendar year in New York City.
- Allows employees to accrue at least one hour of sick leave for every 30 hours worked or provides full-time employees with 40 hours of sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of sick leave at the beginning of the calendar year based on a rate of at least one hour of sick leave for every 30 hours worked.
- Allows employees to use up to 40 hours of accrued sick leave in a calendar year.
- Permits accrued sick leave to be used during a "calendar year," which is a consecutive 12-month period of the employer's choosing.
- Permits employees to use up to 40 hours of accrued sick leave for the same reasons and under the same conditions that sick leave can be used under the law. For example, the policy must permit employees to use leave to take care of "family members" as defined under the law (child, spouse, domestic partner, parent, parent of a spouse or domestic partner, grandchild, grandparent, or sibling).
- Does not impose limitations, conditions, or requirements on the use of sick leave beyond those in the law. For example, an employer cannot require unreasonable notice for the use of sick leave or require an employee to take leave in minimum increments of more than four hours.
- Permits employees to carry over up to 40 hours of unused sick leave to the next calendar year unless the employer provides full-time employees with 40 hours of sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of sick leave at the beginning of the calendar year based on a rate of at least one hour of sick leave for every 30 hours worked.
- Provides that employees are paid at least their regular hourly rate but no less than \$8 per hour (minimum wage).
- Allows an employee to use sick leave without retaliation, such as threats, discipline, demotion, reduction in hours, or termination, and does not prohibit the employee from filing a complaint with DCA.



**3. If an employer provides employees with time off that meets or exceeds the requirements of the law, must the employer maintain records?**

Yes. Employers are required to maintain records to demonstrate compliance with the law. For example, an employer should maintain a copy of its leave policy and payroll or other records that show employees' sick leave use and accrual. In addition, DCA recommends that all employers maintain signed copies of the Notice of Employee Rights or receipts that demonstrate that the employer gave employees the required notice.

**4. An employer has a sick leave policy in effect prior to April 1, 2014 that meets or exceeds the law's requirements. Its employees' calendar year began prior to April 1, 2014. Must the employer provide sick leave to an employee who used all sick leave prior to April 1, 2014?**

No. The employer would not be required to provide that employee with more sick leave until the next calendar year. Note: The employer must give employees the required Notice of Employee Rights created by DCA that states the employer's calendar year in the notice. The employer cannot change the terms or conditions of the policy during the current calendar year.

**VII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME**

**1. What about overlapping jurisdiction between federal and state laws—which would take precedent?**

Federal and state laws, such as the Family Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), or the New York State Human Rights Law take precedent when they require employers to do more than the City's Paid Sick Leave Law.

For example, depending on the facts in a particular situation, under the FMLA, an employer may be required to provide intermittent time off in increments of time less than four hours.

As another example, depending on the facts in a particular situation, under the ADA or the New York State Human Rights Law, an employer may be required to provide an employee with a disability a leave of absence that is longer than the amount of sick leave an employer must allow under the Paid Sick Leave 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 Paid Sick Leave 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 Paid Sick Leave Law.

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

**2. Is leave under the Family Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), and the State Human Rights law paid leave?**

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

### **3. What are some of the other differences between the Family Medical Leave Act (FMLA) and the Paid Sick Leave Law?**

The FMLA provides qualified employees with 12 weeks of job-protected unpaid leave for specific purposes. The FMLA only applies to employers that meet certain criteria and only eligible employees are entitled to take FMLA leave. For more information concerning the FMLA, visit the U.S. Department of Labor website at <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

### **4. Can an employee's use of sick leave be counted toward leave under other laws?**

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

## **VIII. RETALIATION**

### **1. Can an employer retaliate against an employee for using sick leave?**

No. Retaliation is illegal. An employer cannot retaliate against an employee for exercising or attempting to exercise rights under the law, including: requesting and using sick leave; filing a complaint for alleged violations of the law with DCA; communicating with any person, including coworkers, about any violation of the law; participating in an administrative or judicial action regarding an alleged violation of the law; or informing another person of that person's potential rights.

### **2. What constitutes retaliation?**

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

### **3. Does the law protect an employee from retaliation if the employee mistakenly, but in good faith, alleges a violation?**

Yes.

## **IX. NOTICE TO EMPLOYEES**

### **1. Are employers required to give employees notice of their right to sick leave?**

Yes. Employers must give the Notice of Employee Rights created by DCA to new employees when they begin employment and to existing employees by May 1, 2014. The written notice includes:

- Accrual and use of sick leave
- Employer's calendar year
- Right to be free from retaliation
- Right to file a complaint

Notices are available in English, Spanish, Chinese, French-Creole, Italian, Korean, and Russian at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

On the notice, DCA encourages employees to keep a copy of the notice and all documents that show amount of sick leave and sick leave accrual and use.



## **2. In what language must the employer provide the notice?**

An employer must provide the employee with the notice in English and, if available on the DCA website, the employee's primary language.

## **3. How should the employer provide the notice to employees?**

The employer may use a delivery method that reasonably ensures that employees receive the notice. For example, an employer may provide the notice to each employee personally or by regular mail or by email or deliver the notice to the employee by including it in new hire materials if the employer gives those materials directly to the employee. **An employer cannot post the notice instead of providing the notice to employees.**

## **4. Should an employer save a signed copy of the notice or an email receipt for the notice?**

Yes. While the law does not require employers to keep or maintain a copy of the notice signed by employees or a receipt, employers must maintain records documenting their compliance with the law. Saving signed copies of the notice or email receipts are good ways to document that employers gave employees the required notice.

## **5. Does the notice have to be posted in the workplace?**

No. Employers are encouraged—but not required—to post the notice in the workplace in an area accessible to employees. An employer cannot post the notice instead of providing the notice to the employee.

## **6. Must an employer with sick leave policies that meet or exceed the requirements in the law give the required Notice of Employee Rights to employees?**

Yes. An employer must give employees the Notice of Employee Rights created by DCA and available at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave) so that employees are aware of their minimum rights under the Paid Sick Leave Law. The notice states:

Note: The Earned Sick Time Act sets the minimum requirements for sick leave. Your employer's leave policies may already meet or exceed the requirements of the law.

In addition to the required notice, an employer can provide employees with a copy of the employer's policy, but the employer should not amend or modify the required notice beyond filling in the employer's calendar year where indicated.

See VI. OTHER TIME OFF POLICIES on page 15.

## **X. EMPLOYER RECORD KEEPING**

### **1. What records does an employer have to keep?**

Employers must keep and maintain records documenting their compliance with the law for at least three years, unless otherwise required by any law, rule, or regulation. Employers must make the records available to DCA upon notice and at an agreed upon time of day.

The employer must keep health information obtained solely for the purpose of the employee using sick leave confidential unless disclosed by the employee or required by law.

## **2. 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 and as long as health information obtained solely for the purpose of the employee using sick leave is kept confidential unless disclosed by the employee or the disclosure is required by law.

## **3. Are the record keeping requirements of the Paid Sick Leave Law the same as those of the Equal Employment Opportunity Commission (EEOC) or Internal Revenue Service (IRS)?**

The Paid Sick Leave Law requires employers to maintain records documenting compliance with the law for three years. Employers must continue to comply with other relevant laws and rules that govern their record keeping. For example, employers must comply with relevant IRS and EEOC record keeping requirements. For more information about these requirements, visit [www.eeoc.gov](http://www.eeoc.gov) (EEOC website) and [www.irs.gov/Businesses](http://www.irs.gov/Businesses) (IRS website).

## **XI. ENFORCEMENT**

### **1. Who enforces the law?**

DCA enforces the law. However, the Mayor can designate another agency to enforce the law.

## **XII. COMPLAINTS**

### **1. Can employees file a complaint?**

Yes. Employees can file complaints with DCA. The complaint form is available online at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave) or by contacting 311 (212-NEW-YORK outside NYC).

The Mayor can designate another agency to handle complaints.

### **2. How long does an employee have to file a complaint?**

Employees have two years from the date that they knew or should have known of the violation to file a complaint.

### **3. Must the employer respond to the complaint?**

Yes. If an employee files a complaint with DCA, DCA will contact the employer by mail for a written response. The employer must respond to DCA within 30 days and provide the information DCA requests.

### **4. What will DCA do with complaints?**

DCA will conduct a fair investigation of the complaint and will work with the employer and the employee to resolve the complaint through mediation. DCA will also work with the employer to come into compliance with the law.

### **5. Will DCA keep an employee's identity confidential?**

Yes. DCA will keep the identity of the employee confidential unless disclosure is necessary to conduct the investigation, mediate the complaint, or is required by law.



## **6. How will DCA ensure compliance?**

DCA anticipates ensuring compliance through outreach and education and resolving noncompliance through mediation.

If an employer receives a notice of violation, the employer has the opportunity to settle the violation without a hearing or to appear before an impartial judge at DCA's Adjudication Tribunal. The judge will hear testimony from DCA, the employer, and any witnesses. Under the law, the judge 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 sick leave but wasn't paid or \$250, whichever is greater
- \$500 for each time the employee was unlawfully denied 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 sick leave taken without mutual consent of the employer and the employee
- Full compensation, including lost wages and benefits, \$500 and appropriate equitable relief for each time the employer retaliated against the employee for taking sick leave (not including termination)
- Full compensation, including lost wages and benefits, \$2,500 and appropriate equitable relief (including reinstatement) for each time the employer fires an employee for taking sick leave

## **7. What are the maximum penalties under the law?**

In addition to the relief that an employer may be required to provide employees whose rights have been violated (see previous FAQ), the law also outlines the following maximum civil penalties that may be imposed against employers for violations of the law:

- \$500 for the first violation
- Up to \$750 for a second violation within two years of a prior violation
- Up to \$1,000 for subsequent violations that occur within two years of any previous violation
- Up to \$50 for each employee who was not given the required Notice of Employee Rights

## **8. Will businesses with fewer than 20 employees be subject to penalties for violations starting on April 1, 2014?**

No. Employers with fewer than 20 employees will not be subject to penalties for violations that occur before October 1, 2014. However, employers of all sizes may be required to provide to employees whose rights have been violated any other remedies authorized by law, such as lost wages and benefits and equitable relief, for violations that occur before October 1, 2014.

## **9. If a business with fewer than 20 employees receives a violation before October 1, 2014, will it count as a first violation for the purpose of assessing penalties that occur after October 1, 2014?**

The first violation that an employer with fewer than 20 employees receives before October 1, 2014 will not count toward the calculation of penalties for violations that the employer might receive after October 1, 2014. But if an employer commits a second violation of the same offense before October 1, 2014, that second violation will count toward the calculation of penalties if a subsequent violation of the same offense is committed after October 1, 2014.

#### **10. Will manufacturers be subject to penalties for violations starting April 1, 2014?**

No. Manufacturers that are listed in sectors 31, 32, or 33 of the [U.S. Department of Labor](#) North American Industry Classification System (NAICS) will not be subject to penalties for violations that occur before October 1, 2014. However, manufacturers may be required to provide to employees whose rights have been violated any other remedies authorized by law, such as lost wages and benefits and equitable relief, for violations that occur before October 1, 2014.

Examples of manufacturing companies include:

- Retail and Commercial Bakeries
- Numerous Types of Food Manufacturers
- Numerous Types of Textile Product Mills
- Numerous Types of Apparel Manufacturers
- Numerous Types of Plastic Products Manufacturers
- Commercial Printing Establishments
- Pharmaceutical Preparation Manufacturers
- Wood Kitchen Cabinet and Countertop Manufacturers
- Dental Manufacturing Laboratories

For the full list, go to [http://www.bls.gov/oes/current/naics2\\_31-33.htm](http://www.bls.gov/oes/current/naics2_31-33.htm)

#### **11. If a manufacturer receives a violation before October 1, 2014, will it count as a first violation for the purpose of assessing penalties that occur after October 1, 2014?**

The first violation that a manufacturer receives before October 1, 2014 will not count toward the calculation of penalties for violations that the employer might receive after October 1, 2014. But if the employer commits a second violation of the same offense before October 1, 2014, that second violation will count toward the calculation of penalties if a subsequent violation of the same offense is committed after October 1, 2014.

#### **12. 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 Earned Sick Time Act. However, employees retain any other rights they may have under other local, state, or federal laws.



## **XIII. RULES**

### **1. Are there rules or regulations implementing the law?**

DCA published proposed rules, which are available at [nyc.gov/PaidSickLeave](http://nyc.gov/PaidSickLeave).

### **2. What do the proposed rules cover?**

The proposed rules clarify provisions in the Earned Sick Time Act, establish requirements to implement the Act and meet its goals, and provide guidance to covered employers and protected employees. Specifically, these rules:

- Provide a methodology for new employers to calculate the number of their employees.
- Address situations where employees are employed by more than one employer, who, as “joint employers,” are jointly and individually liable for ensuring compliance with the Earned Sick Time Act.
- Confirm that the Earned Sick Time Act applies to employees irrespective of immigration status.
- Explain what may constitute a “reasonable” minimum amount of leave that an employer may require for the use of sick leave.
- Establish requirements for employer policies that require employees to provide “reasonable notice” before using sick leave.
- Clarify that an employer may require an employee to provide written documentation of the need for sick leave from a licensed health care provider if the employee is absent for more than three consecutive “work days” and define “work day” in this context.
- Address accrual of sick leave for domestic workers.
- Address the rate of pay of paid sick leave for certain employees.
- Provide that employees must be paid for sick leave no later than the payday for the next regular payroll period after the sick leave was used by the employee, unless the employer has asked for written documentation or verification of the need for sick leave, in which case the employer is not required to pay sick leave until the employee provides it.
- Address what happens to accrued sick leave after an employer sells, transfers, or otherwise assigns its business to another employer and the employee continues to work for that business.
- Establish requirements relating to the distribution or posting of an employer’s sick leave policies.
- Clarify the requirements in the Earned Sick Time Act relating to DCA access to employer records and define “appropriate notice” of the need for such access by DCA.
- Describe the circumstances in which DCA will issue a Notice of Violation to an employer.
- Establish a cure period for certain violations of the Earned Sick Time Act relating to the failure to respond to a complaint or provide records.
- Describe the circumstances in which DCA may conduct an investigation of an employer’s employment practices on its own initiative.

### 3. How do I comment on the proposed rules?

You can comment on the proposed rules in one of the following ways:

- **Online.** Submit comments to DCA through the NYC Rules website at <http://rules.cityofnewyork.us>
- **Email.** Email written comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov)
- **Mail.** Mail written comments to Ricky Wong, Assistant Commissioner for Community and Government Relations, Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** Fax written comments to (646) 500-5962.
- **Speak at the Hearing.** You must sign up to speak. You can sign up before the hearing by calling (212) 436-0186. You can also sign up in the hearing room before the hearing begins on April 29, 2014. You can speak for up to three minutes.

**Written comments may be submitted on or before 5 p.m. on April 29, 2014.**

#### Questions? Want to attend a training to understand the law?

Contact DCA in the following ways:

- Email [PaidSickLeave@dca.nyc.gov](mailto:PaidSickLeave@dca.nyc.gov)
- Call 311 (212-NEW-YORK outside NYC) and ask for information about Paid Sick Leave
- Online Live Chat, available at [nyc.gov/BusinessToolbox](http://nyc.gov/BusinessToolbox)