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**Department of
Consumer Affairs**

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Paid Sick Leave Frequently Asked Questions

“New Yorkers will finally have legal protection to a basic right that so many of us take for granted each day—and employers will benefit from a stronger and healthier workforce.”

- Mayor Bill de Blasio
February 26, 2014 Statement about Paid Sick Leave Law

Under New York City’s Earned Sick Time Act (“Paid Sick Leave Law” or “the law”), certain employers must give their employees sick leave, which employees can use for the care and treatment of themselves or a family member. Employers with five or more employees or one or more domestic workers must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

The Department of Consumer Affairs (DCA) prepared Frequently Asked Questions to provide guidance to employers and employees about their responsibilities and rights under the law. DCA will update FAQs as appropriate. Please note the date at the bottom of the sheet. To read the law, go to nyc.gov/PaidSickLeave. Monitor the website for updates and rules.

NYC’s Paid Sick Leave Law:

Together we can keep businesses strong and keep New Yorkers healthy

I. GENERAL QUESTIONS

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

April 1, 2014.

Exception: If an employee is subject to a collective bargaining agreement that is in effect on April 1, 2014, the employee becomes covered under the law beginning on the date that the agreement ends.

2. Which employers must provide sick leave?

Employers with five or more employees who are hired to work more than 80 hours a calendar year in New York City must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

Employers with one or more domestic workers who have worked for the employer for at least a year and who work more than 80 hours a calendar year must provide paid sick leave.

3. Which employers are exempt under the law?

The law does not apply to:

- Government agencies (U.S. government, State of New York, City of New York)
- Federal work study programs
- Employees whose work is compensated by qualified scholarship programs
- Physical therapists, occupational therapists, speech language pathologists, and audiologists who are licensed by the New York State Department of Education
 - These professionals are not covered under the law if they call in for work assignments at will; determine their own work schedule; have the ability to reject or accept any assignment referred to them; and are paid an average hourly wage, which is at least four times the federal minimum wage.
 - The exemption, if applicable, only applies to physical therapists, occupational therapists, speech language pathologists, and audiologists.
- Independent contractors who do not meet the definition of an employee under [New York State Labor Law](#) (Go to [labor.ny.gov](#) and search “Independent Contractors.”)
- Participants in Work Experience Programs (WEP)
- Certain employees subject to a collective bargaining agreement (See FAQs about collective bargaining agreements beginning on page 7.)
- Employees who do not work more than 80 hours in a calendar year

4. Are nonprofit employers exempt?

No.

5. How is the number of employees determined?

Employers should count all employees who work for pay on a full-time, part-time, or temporary basis. Employees must work more than 80 hours a calendar year to count toward the number of employees.

6. What does “calendar year” mean for purposes of the law?

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

Note: Employers must include their calendar year in the written notice they are required to give employees. See FAQs about “NOTICE TO EMPLOYEES” on page 18.

7. What if the number of employees changes every week?

Employers should base their size on the *average* number of employees who worked for pay per week during the prior calendar year. If the average number of employees who worked more than 80 hours in the prior calendar year is five or more, employers must provide paid sick leave.

8. What if I am a new employer and the number of employees changes every week?

Employers that have operated for less than one year as of April 1, 2014 should base their size on the *average* number of employees who worked for pay per week during the first 80 days of operation. If the average number of employees who worked more than 80 hours during the first 80 days of operation is five or more, employers must provide paid sick leave.

9. If the employer is part of a chain or has multiple locations, do all employees count toward the number of employees?

If the business owner or principal of the multiple locations owns at least 30 percent of each location and the businesses are engaged in the same business *or* operate under a franchise agreement with the same franchisor 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. Go to [ag.ny.gov](#) and search “Franchisors and Franchisees” for information.

Scenarios:

An employer owns at least 30 percent of three pizzerias in New York City. Each location employs four employees. Would this employer be required to provide paid sick leave?

Yes. The employer should count all 12 employees toward the number of employees.

An employer owns and operates one fast food restaurant under a franchise agreement. The franchisor owns less than 30 percent of the restaurant. The restaurant employs four people. Would this employer be required to provide paid sick leave?

No. The employer owns just the one fast food restaurant franchise, which employs less than five employees, and the restaurant is not part of a group of establishments that share a common owner or principal who owns at least 30 percent of each establishment. The employer must provide unpaid sick leave.

10. If some employees don't live in New York City, do they count toward the number of employees?

Yes. The law applies to employees employed for hire within the City of New York for more than 80 hours a calendar year. It does not matter where the employee lives.

11. Must an employer based outside of New York City provide sick leave to employees who work in New York City?

Yes. Employers located outside New York City must provide sick leave to employees who work more than 80 hours per calendar year in New York City. Employers with five or more employees who work more than 80 hours per calendar year in New York City must provide paid sick leave to employees who work in New York City. Employers with one to four employees who work more than 80 hours per calendar year in New York City must provide unpaid sick leave.

Scenarios:

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

Yes. Making deliveries or pickups in New York City is considered to be performing work in New York City. If the drivers do this work for more than 80 hours in a calendar year, Sara must allow them to accrue and use up to 40 hours of sick leave.

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 Paid Sick Leave 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 Paid Sick Leave Law. The law does not apply to employees who do not work in New York City.

12. Can two businesses jointly employ one employee?

Yes. Two or more businesses may be a "joint employer" of an employee under the law. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For example, a temporary agency and the business with which it contracts may be the joint employers of an employee.

13. What factors should be considered in determining whether an employer is a "joint employer"?

Whether a business is a "joint employer" of the employee is based on an assessment of the extent to which the employer exercises formal and functional control over the employee. Factors DCA will consider include but are not limited to whether:

- 1) The business has the power to hire and fire the employee.
- 2) The business supervises and controls the employee's work schedule or conditions of employment.
- 3) The business determines the rate and method of payment.
- 4) The business maintains the employee's employment records.
- 5) The employee uses the business's premises and equipment.
- 6) The employee performs discrete work that is integral to the business's production or work.
- 7) The employee works exclusively or predominantly for the business.
- 8) The business provides training to the employee.

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

Every business that is a joint employer must count each employee jointly employed in determining the number of employees who work for pay. For example, an employer who jointly employs three workers from a temporary help agency and also has three permanent employees has six employees for the purposes of the law and must provide paid sick leave as long as five or more of these employees work more than 80 hours per calendar year in New York City.

15. If employers are joint employers, which employer is responsible for compliance with the law?

Every joint employer is responsible, individually and jointly, for compliance with all provisions of the Paid Sick Leave Law. Example: If a business contracts with a temporary staffing agency to provide temporary employees, both the business and the temporary staffing agency may be considered “joint employers” of the employees under the law and have an obligation to ensure that the law’s requirements are met. The business and the temporary staffing agency may agree between themselves who will be responsible for providing the employees with the notice required under the law and who will be responsible for record keeping responsibilities, but any such assignment of responsibility cannot limit or deny the rights of temporary employees under the law.

16. How can employers confirm whether or not the law applies to their business?

Businesses can contact DCA in the following ways:

- Email 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

Employers should be prepared to provide information about their business so that DCA can provide general guidance about whether the law applies to their business.

II. EMPLOYEES COVERED/NOT COVERED BY THE LAW

1. Which employees are covered by the law?

Most employees who work more than 80 hours a calendar year in New York City are covered by the law. The law covers:

- Full-time employees
- Part-time employees
- Temporary employees
- Transitional jobs program employees
- Undocumented employees
- Employees who are family members but not owners (See FAQ on page 7.)
- Employees who live outside of New York City but work in New York City

2. Which employees are *not* covered by the law?

The law does not apply to:

- Employees who work 80 hours or less a calendar year in New York City
- Students in federal work study programs
- Employees whose work is compensated by qualified scholarship programs
- Employees of government agencies
- Physical therapists, occupational therapists, speech language pathologists, and audiologists who are licensed by the New York State Department of Education
 - These professionals are not covered under the law if they call in for work assignments at will; determine their own work schedule; have the ability to reject or accept any assignment referred to them; and are paid an average hourly wage, which is at least four times the federal minimum wage.
 - The exemption, if applicable, only applies to physical therapists, occupational therapists, speech language pathologists, and audiologists.
- Independent contractors who do not meet the definition of an employee under [New York State Labor Law](#) (Go to [labor.ny.gov](#) and search “Independent Contractors.”)
- Participants in Work Experience Programs (WEP)
- Certain employees subject to a collective bargaining agreement (See FAQs about collective bargaining agreements beginning on page 7.)

3. Does the law cover domestic workers?

Yes. Under New York State Labor Law, “domestic worker” is defined as:

“a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose. ‘Domestic worker’ does not include any individual (a) working on a casual basis, (b) who is engaged in providing companionship services, as defined in paragraph fifteen of subdivision (a) of section 213 of the fair labor standards act of 1938, and who is employed by an employer or agency other than the family or household using his or her services, or (c) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services under a program funded or administered by federal, state or local government.”

- New York State Labor Law § 2(16)

Domestic workers who have worked for the same employer for at least one year and who work more than 80 hours a calendar year earn two days of paid sick leave under City law. This sick leave is in addition to the three days of paid rest to which domestic workers are entitled under Section 161(1) of the New York State Labor Law.

Go to [labor.ny.gov](#) and search “Labor Law” and “Domestic Workers’ Bill of Rights.” Go to [nyc.gov/PaidSickLeave](#) where DCA will provide guidance specifically for domestic workers.

4. Does the law cover employees who are based outside of New York City but work in New York City on an occasional basis?

Only the hours that an employee works in New York City count toward the 80 hours, and the sick leave can only be used when the employee is working in New York City.

5. Are independent contractors or consultants covered by the law?

No. The law applies to employees only. Whether someone 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.

Example: An employer issues a 1099 tax form to an individual who performs work for the employer. The employer's issuance of a 1099 tax form or description to an individual who performs work for the employer does not determine whether that individual is an independent contractor. Other factors must be considered.

More information is available from the [New York State Department of Labor](http://labor.ny.gov) at labor.ny.gov. Search "Independent Contractors."

6. Are supervisors and managers covered by the law?

Yes.

7. Are owners, partners, shareholders, or board members considered employees?

Whether or not an individual is an employee depends on several factors. According to the New York State Department of Labor and courts considering this issue, factors to consider include whether the individual:

- Has the power to hire and fire employees
- Supervises and controls employee work schedules or conditions of employment
- Determines the rate and method of payment
- Maintains employment records

For further explanation of this issue, visit the New York State Department of Labor [website](http://labor.ny.gov) at labor.ny.gov. Search "Legal Updates" and select "Counsel Opinion Letters" from the left navigation. In Search field, enter RO-09-0147.

8. Does an employer have to provide sick leave to employees who telecommute?

Employees who telecommute **are covered** by the law for the hours when they are physically working in the City, even if the employer is physically located outside the City.

Employees who telecommute **are not covered** by the law for the hours when they are not physically working in the City, even if the employer is physically located in the City.

9. Are industrial homeworkers covered by the law?

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 the City.

Employees who manufacture industrial goods in their home for an employer **are not covered** by the law if they perform their work from a residence outside of New York City, even if the employer is physically located in the City.

10. Are employees covered by current valid collective bargaining agreements covered by the law?

Employees covered by a collective bargaining agreement that is in effect on April 1, 2014 begin to accrue sick leave under City law beginning on the date that the agreement ends.

11. What happens to collective bargaining agreements when they technically expire but new ones are being negotiated?

The Paid Sick Leave Law takes effect on the date an agreement ends. Generally, if the parties agree to extend the agreement during negotiations, then the parties would still be bound by the terms of the collective bargaining agreement.

12. What about collective bargaining agreements that go into effect after April 1, 2014?

The law does not apply to employees covered by collective bargaining agreements if the collective bargaining agreement expressly waives the law's provisions *and* the agreement provides a comparable benefit to employees, such as paid time off.

Exception: For employees in the construction or grocery industry covered by a collective bargaining agreement, 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.

13. What happens to an employee who had been covered under a collective bargaining agreement that provided comparable benefits if the agreement ends?

If a collective bargaining agreement ends, any employee covered by the law would be covered from the date that the agreement ends.

III. RIGHT TO SICK LEAVE – HOURS, ACCRUAL

1. How much sick leave do employers have to give employees?

Employers must give employees up to 40 hours of sick leave every calendar year.

Exception: An employer must give a domestic worker who has worked for the employer for at least one year two days of paid sick leave in addition to the three days of paid rest to which the domestic worker is entitled under New York State Labor Law. Go to **labor.ny.gov** and search "Domestic Workers' Bill of Rights." DCA will provide further guidance on paid sick leave for domestic workers at **nyc.gov/PaidSickLeave**.

2. How does sick leave accrual work under the law?

Employees accrue sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of sick leave per calendar year.

Exception: Accruals for domestic workers follow the New York State Labor Law. Go to **labor.ny.gov** and search "Domestic Workers' Bill of Rights." A domestic worker is entitled to two days of paid sick leave after working for the same employer for at least one year. DCA will provide guidance on paid sick leave for domestic workers at **nyc.gov/PaidSickLeave**.

3. When do employees begin to accrue sick leave?

Employees begin to accrue sick leave on April 1, 2014 or on their first day of employment, whichever is later. DCA will provide further guidance on how sick leave accrues for domestic workers at **nyc.gov/PaidSickLeave**.

Exception: Employees covered by a collective bargaining agreement that is in effect on April 1, 2014 begin to accrue sick leave under City law beginning on the date that the agreement ends.

4. When can an employee start using sick leave?

Employees can start using accrued sick leave on July 30, 2014 or 120 days after the start of employment, whichever is later.

After 120 days, an employee can use sick leave as it is accrued.

Note: Before July 30, 2014, the employee may be entitled to leave under other laws, such as the Family and Medical Leave Act (FMLA), New York State Human Rights Law, New York City Human Rights Law, or as a reasonable accommodation under the Americans with Disabilities Act (ADA). Generally, this leave is not required to be paid.

Exception: DCA will provide further guidance when domestic workers can start using sick leave at nyc.gov/PaidSickLeave.

5. What happens to sick leave that an employee has accrued but hasn't used at the end of the calendar year?

Up to 40 hours of unused sick leave can be carried over to the next calendar year. However, employers are only required to allow employees to use up to 40 hours of sick leave per calendar year.

DCA will provide further guidance for domestic workers at nyc.gov/PaidSickLeave.

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

An employer can choose—but is not required—to pay an employee for unused sick leave at the end of the calendar year. Employees cannot carry over sick leave if:

- The employer pays them for the unused sick leave. AND
- The employer provides the employee with an amount of sick leave that meets or exceeds the requirements of the law for the new calendar year on the first day of the new calendar year.

Scenario:

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

Paulina can take 40 hours of sick leave right away—her earned hours of sick leave roll over to the new calendar year. But Paulina's employer does not have to let her use more than 40 hours of sick leave in the new calendar year.

7. Can an employee agree with an employer to be paid for sick leave on an as-accrued basis instead of only at the end of the calendar year?

No. The purpose of the law is to ensure that employees can use sick leave for the care and treatment of themselves or a family member. In enacting the law, the City Council determined that providing employees with earned sick leave would have a positive effect on public health and would foster a healthy and productive workforce. Paying employees for unused sick leave before the end of the calendar year could leave employees with no sick leave on days when employees need to use sick leave and would undercut the purpose of the law.

8. What is the advantage of carrying over sick leave?

When unused sick leave is carried over into a new calendar year, an employee is able to use it right away instead of waiting to accrue new sick leave.

9. Can an employer have a policy that front-loads 40 hours of 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 hours of sick leave at the beginning of each calendar year. 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 sick leave and use those hours at the beginning of the new calendar year.

10. Can an employer front-load accrual for part-time employees?

At the beginning of each calendar year, an employer can provide part-time employees with the hours of sick leave they will accrue (based on one hour for every 30 hours the employee is scheduled to work).

If the employee works more hours than anticipated:

- The employer must allow the employee to accrue leave at the rate of one hour for every 30 hours worked and use up to 40 hours of sick leave.
- If the employee earns—but does not use—these additional sick leave hours, in the *next* calendar year, the employer must allow the employee to use these hours, as well as the hours the employee accrues based on a part-time schedule.

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 sick leave and use those hours at the beginning of the new calendar year.

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

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

12. How does sick leave accrue 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, paid 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, sick leave accrues based on the employee's normal workweek.

13. How does 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, paid sick leave accrues during all hours worked, including overtime hours worked.

14. Does paid 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?

Accrual and carryover must be based on the calendar year, as determined by the employer, unless the employer has a more generous policy that allows employees to accrue the leave required by the law in less than a calendar year.

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

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

16. If an employee is transferred to another division or location of the same employer in New York City, is the employee entitled to sick leave that was accrued at the previous location?

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

17. If an employer sells a covered business to another business, what happens to an employee’s sick leave?

The employee will retain unused 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. If the new employer has fewer than five employees, the employee must be paid for unused sick leave.

18. Do employers have to pay unused sick leave to employees who leave the business?

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 sick leave.

19. Can employers give employees more sick leave than the amount required by law?

Yes. Employers may provide for more generous leave.

IV. USE OF SICK LEAVE

1. For what reasons can an employee use sick leave?

Employees can use sick leave for absence from work due to:

- The employee’s mental or physical illness, injury, or health condition
- The employee’s need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition
- The employee’s need for preventive medical care
- Care of a family member who needs medical diagnosis, care, or treatment of an illness, injury, or health condition, or who needs preventive medical care
- Closure of employee’s place of business due to a public health emergency (as declared by the Commissioner of the New York City Department of Health and Mental Hygiene or the Mayor)
- The employee’s need to care for a child whose school or child care provider is closed due to a public health emergency

2. Who is considered a family member under the law?

The law recognizes the following as an employee's family member:

- Child
- Grandchild
- Spouse
- Domestic partner
- Parent
- Grandparent
- Child or parent of an employee's spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)

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

Yes.

4. Can employees use sick leave for the health care of adult children?

Yes.

5. Can parents use sick leave following the birth of their child?

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

Parents cannot use sick leave for "bonding" purposes, which differs from the Family Medical Leave Act ([FMLA](#)), which does permit leave for the purpose of bonding with a newborn or newly adopted child. For more information on FMLA, go to [dol.gov](#) and search "Family & Medical Leave."

6. Can an employer require employees to use sick leave in minimum increments?

Yes. The law allows an employer to set *reasonable* minimum increments for the use of sick leave, but the minimum cannot be more than four hours per day unless otherwise permitted by state or federal law.

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

No. The employee cannot claim this time as sick leave because the employee was not scheduled to work during the scheduled vacation.

8. Can employees use sick leave during overtime that they were required to work?

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

9. Can an employee work additional hours or swap shifts instead of using 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 sick leave, if the sick leave was foreseeable, or within the seven days after taking sick leave. An employer cannot require an employee to work additional hours as makeup for sick leave.

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