

EMPLOYMENT LAW SUMMARY

New York Employee Leave Laws— Overview



Because You're Different

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages, including vacation time, personal leave and sick leave. Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, New York employers must comply with state employment laws requiring employee leave for specific purposes.

Employers must also follow federal laws, such as the Family and Medical Leave Act (FMLA), that require employee leave.

New York has state laws mandating:

- Paid family leave;
- Sick leave (paid and unpaid);
- Civic duty leave;
- Voting leave;
- Military and military spouse leave;
- Bone marrow and blood donation leave;
- Adoptive parents leave;
- Bereavement leave;
- Domestic violence leave; and
- Emergency responder leave.

The information below provides a high-level overview of New York state laws concerning employee leave and requirements.

Paid Family Leave

New York's paid family leave law requires private sector employers to provide paid family leave benefits to eligible employees.

The paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.

Coverage for paid family leave benefits is typically included under an employer's existing disability benefits policy.

Under the law, employees must receive:

- Wage replacement benefits for up to 12 weeks of leave;
- Job reinstatement upon return from paid family leave; and
- Continuation of health insurance while out on paid family leave.

An employee may receive paid family leave benefits for the following reasons:

- To provide care to a family member with a serious health condition;
- To bond with the employee's child during the first 12 months after the child's birth, or after the placement of the child for adoption or foster care with the employee; or

- For any qualifying exigency as interpreted under the federal FMLA arising out of the fact that the spouse, domestic partner, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces.

Paid family leave benefits are funded through employee paycheck deductions. Employers are not responsible for contributing to or funding paid family leave benefits, but may choose to do so.

An employer may not discriminate or retaliate against employees for taking or inquiring about paid family leave.

Employers are required to conspicuously post a notice in the workplace to indicate their compliance with the paid family leave requirements. In addition, employers must provide employees who take eight or more consecutive days of family leave with a written notice of their rights under the paid family leave law.

Employers that maintain an employee handbook must include a paid family leave policy that outlines employees' rights and obligations, including how to file a claim for paid family leave. An employer that does not maintain a handbook must provide each employee with a written notice regarding all of the employee's rights and obligations under the paid family leave law, including information on how to file a claim for paid family leave.

Paid Sick Leave

Employees are eligible for 40-56 hours of paid or unpaid sick leave per year, depending on employer size and income, as follows:

- Fewer than 5 employees; annual net income \$1 million or less: Up to 40 unpaid hours
- Fewer than 5 employees; annual net income over \$1 million: Up to 40 paid hours
- 5-99 employees: Up to 40 paid hours
- 100 or more employees: Up to 56 paid hours

Employees accrue one hour of sick leave for every 30 hours worked. Frontloading is permitted, and employees must be allowed to carry over unused leave to the following year. Leave must be allowed for specified reasons related to an employee's or family member's physical or mental illness, injury or health condition. Employees may also take leave for certain reasons related to domestic violence. Employer confidentiality rules apply.

Employees must be paid at their regular rate of pay or the applicable state law minimum wage, whichever is greater, but employees are not entitled to a payout of unused leave at the end of employment. Retaliation is prohibited, and employees returning from leave must be restored to their former positions.

Employers with policies that meet or exceed the law's benefits are not required to provide additional leave.

Employers must keep records of employee sick leave for six years, and they must provide a summary of accrued and used sick leave within three days on employee request.

Civic Duty Leave

An employee who is summoned to serve as a juror is eligible to take unpaid leave for the period of jury service. Employers with more than 10 employees cannot withhold the first \$40 of the juror's daily wages during the first three days of jury service. Notice and certification requirements apply.

Employers must allow employees who are crime victims or are subpoenaed as witnesses in criminal proceedings to take time off from work to attend the criminal proceedings. Leave is unpaid. Notice and certification requirements apply.

Voting Leave

New York State employees who are registered voters are eligible for up to two hours of paid time off to vote if they do not have "sufficient time to vote." "Sufficient time to vote" means four consecutive hours either from the opening of the polls to the beginning of the work shift, or from the end of the shift to the closing of the polls. The amount of paid time off required must be determined on a case-by-case basis, as waiting times at polling places, traffic conditions and other factors may vary. Time off for voting is required only at the beginning or end of employees' working shifts, as the employer may designate, unless otherwise mutually agreed. Notice and posting requirements apply.

Military and Military Spouse Leave

In addition to USERRA, New York law provides employment protections for New York and U.S. military members, including reemployment rights and military spouse leave.

Under military spouse leave, employers with 20 or more employees working in at least one work site must grant up to 10 days of unpaid leave to an employee who is a spouse of a military service member who has been deployed during a period of military conflict. Eligible employees must have worked for a covered employer for an average of 20 or more hours per week. Leave may only be taken while the military service member is on leave from deployment .

Bone Marrow and Blood Donation Leave

Employers with 20 or more employees working in at least one work site must provide eligible employees with leave for bone marrow and blood donation. Employees are eligible for bone marrow or blood donation leave if they:

- Work for a covered employer for an average of 20 or more hours per week; and
- Seek to donate bone marrow or blood.

Leave for bone marrow donation may be taken in one or more periods, but may not exceed 24 work hours for each bone marrow donation. The leave period for blood donation varies depending on whether the donation takes place on or off the employer's premises.

Notice and certification requirements apply. Leave may be paid or unpaid, at the employer's discretion.

Adoptive Parents Leave

Employers must give employees who adopt a child the same leave benefits given to employees for the birth of a child, if the adopted child is either:

- Younger than school age (under five years old); or
- Hard to place or handicapped, and under 18 years old.

Employers cannot retaliate against an employee for exercising his or her right to adoptive parents leave.

Bereavement Leave

Employers are not required to provide funeral or bereavement leave for employees.

If employers allow employees to take funeral or bereavement leave for the death of the employee's spouse or the child, parent or other relative of the employee's spouse, the employer must provide the same leave to an employee for the death of the employee's same-sex committed partner or the child, parent or other relative of that partner.

Domestic Violence Leave

Employers must allow employees they know are domestic violence victims to take leave to obtain:

- Medical attention (including for a child);
- Services from a domestic violence shelter, program or rape crisis center;
- Psychological counseling (including for a child); or
- Legal services.

Employees may also take leave to increase safety from future domestic violence, including relocating, and to assist in prosecuting the offense or appear in court.

Employee notice and certification requirements apply.

Employers who can show the leave would cause undue hardship are not required to provide leave. Employees may be required to take the leave as ordinary paid leave, or as unpaid leave where paid leave is not available.

Volunteer Emergency Responder Leave

Employees who are volunteer firefighters or members of a volunteer ambulance service must be granted an unpaid leave from work while engaged in their volunteer duties in response to a declared emergency. To be eligible, an employee must have previously provided his or her employer with written documentation of the employee's volunteer status. Additionally, the employer may request documentation of the employee's volunteer service during the leave period.

The employee may elect to substitute the unpaid leave with other accrued vacation or paid leave available to the employee.

Please note that the information above focuses on statewide laws. Cities, towns and counties across the country (including, for example, New York City and Westchester County) have enacted local employee leave ordinances. Employers must comply with local ordinances and statewide law where they apply.

More Information

Contact Heffernan Insurance Brokers for more information on New York employee leave laws.

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