



Bill de Blasio
Mayor

Consumer Affairs

Lorelei Salas
Commissioner

PAID SAFE AND SICK LEAVE: FREQUENTLY ASKED QUESTIONS

The Department of Consumer Affairs (DCA) Office of Labor Policy & Standards (OLPS) enforces NYC's Paid Safe and Sick Leave Law. The law covers workers regardless of immigration status. OLPS takes reports of employer retaliation and complainant confidentiality very seriously. See the sections on Retaliation, Complaints, and Enforcement for more information about how OLPS protects workers.

Note: OLPS will update FAQs as appropriate. Please note the date at the bottom of the sheet and check back for updates to make sure you have the most current information.

- I. **UPDATE: PAID SAFE AND SICK LEAVE LAW**
- II. **GENERAL QUESTIONS**
- III. **EMPLOYEES COVERED/NOT COVERED BY THE LAW**
- IV. **RIGHT TO SAFE AND SICK LEAVE – HOURS, ACCRUAL**
- V. **USE OF SAFE AND SICK LEAVE**
- VI. **HOW SAFE AND SICK LEAVE IS PAID**
- VII. **OTHER TIME OFF POLICIES**
- VIII. **OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME**
- IX. **RETALIATION**
- X. **NOTICE TO EMPLOYEES**
- XI. **EMPLOYER RECORD KEEPING**
- XII. **COMPLAINTS**
- XIII. **ENFORCEMENT**

I. UPDATE: PAID SAFE AND SICK LEAVE LAW

1. What has changed?

NYC's Paid Sick Leave Law was amended to include safe leave, which provides covered employees the right to use accrued safe and sick leave for the care and treatment of themselves or a family member and to seek assistance or take other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. The amendments also expand the definition of family members.

2. When do the changes go into effect?

NYC's Paid Safe and Sick Leave Law, as amended, took effect May 5, 2018.

3. What does the new right to safe leave involve?

Covered workers can use earned safe and sick 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; and
- attend civil or criminal court dates related to any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

4. Who is considered a family member under the amended law?

The law recognizes the following individuals as "family members:"

- Any individual whose close association with the employee is the equivalent of family
- Child (biological, adopted, or foster child; legal ward; child of an employee standing *in loco parentis*)
- Grandchild
- Spouse (current or former regardless of whether they reside together)
- Domestic Partner (current or former regardless of whether they reside together)
- Parent
- Grandparent

- Child or Parent of an employee’s spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)
- Any other individual related by blood to the employee

5. Can an employee use safe leave even if the employee has not reported a crime to the police 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 is an example of safe leave?

Scenarios (*assume individuals are covered employees*):

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 NYC's Paid Safe and Sick Leave Law; covered employees may use safe leave to relocate and to enroll children in a new school. Ruby's employer must provide her safe leave under NYC's Paid Safe and Sick Leave Law.

Scenarios continued (*assume individuals are covered employees*):

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 NYC's Paid Safe and Sick Leave Law. The law, however, does not prohibit his employer from providing him with 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 him with safe leave under NYC's Paid Safe and Sick Leave Law.

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 safe leave under the law.

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."

II. GENERAL QUESTIONS

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

Employers had to comply with NYC's Paid Sick Leave Law beginning April 1, 2014.

Employers had to comply with NYC's Paid Safe and Sick Leave Law, as amended, beginning May 5, 2018.

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

2. What is safe leave?

Employees may 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; and
- attend civil or criminal court dates related to any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

For information, resources, and organizations that can assist those experiencing intimate partner violence, stalking, and trafficking, please contact NYC Hope by:

- Calling 1-800-621-HOPE (4673)
- Visiting the NYC Hope website nyc.gov/nychope

3. Does safe leave provide additional time off for employees?

No. NYC's Paid Safe and Sick Leave Law does not change the amount of leave that employers are required to provide. However, as of May 5, 2018, an eligible employee may use earned leave for safe leave purposes in addition to permissible sick leave use.

4. Which employers must provide safe and sick leave?

Employers with five or more employees who work more than 80 hours a calendar year in New York City must provide *paid* safe and sick leave.

Employers with fewer than five employees must provide *unpaid* safe and 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* safe and sick leave.

5. Which employers are exempt under the law?

The law does not apply to:

- Employees who work 80 hours or less a calendar year in New York City
- Government agencies (U.S. government, State of New York, City of New York)
- Federal work study programs. Information about federal work study programs is available at the U.S. Department of Education website:
<http://www2.ed.gov/programs/fws/index.html>
- Employees whose work is compensated by qualified scholarship programs as that term is defined in the federal IRS Code, 26 U.S.C. § 117. For more information, go to <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleA-chap1-subchapB-partIII-sec117.htm>
- 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
- Participants in Work Experience Programs (WEP)
- Certain employees subject to a collective bargaining agreement (See [FAQs about collective bargaining agreements.](#))

Anyone with additional questions about exemptions under the law can call 311 and ask for information about Paid Safe and Sick Leave or email DCA at PSSL@dca.nyc.gov.

6. Are nonprofit employers exempt?

No. Nonprofit employers are covered by NYC's Paid Safe and Sick Leave Law and must comply with the law.

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. Employees must work more than 80 hours in a calendar year to count toward the number of employees.

An employer that has operated for less than one year should count the number of employees performing work for compensation per week, provided that if the number fluctuates between less than five employees and five or more employees per week, 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.

An employer that has operated for one year or more should count the number of employees working for the employer per week at the time the employee uses 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 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.”](#)

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

If the owner or principal of the multiple locations of a business owns at least 30 percent of each location that is engaged in the same business or operates 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 www.ag.ny.gov and search “Franchisors and Franchisees” for information.

Scenarios:

Kenny, an employer, owns at least 30 percent of three pizzerias in New York City. Each location employs four employees. Would Kenny be required to provide paid or unpaid safe and sick leave?

Kenny would be required to provide *paid* leave to his employees. Kenny should count all 12 employees toward the number of employees.

Employer Silvia owns less than 30 percent of a fast food restaurant, which is operated under a franchise agreement. There are four other locations of this franchise in New York City. Silvia employs four workers at her restaurant. Would Silvia be required to provide paid or unpaid safe and sick leave?

Silvia would be required to provide *unpaid* leave to her employees. Silvia owns less than 30 percent of her fast food restaurant franchise, 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, and Silvia employs fewer than five employees.

10. Do employees who don't live in New York City count toward the number of employees?

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

11. Must an employer based outside of New York City 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 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* 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* 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 Safe and 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 in New York City for more than 80 hours in a calendar year, Sara must allow them to accrue and use up to 40 hours of safe and 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 Safe and 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 Safe and Sick Leave Law. The law does not apply to employees who do not work in New York City.

12. Can two employers jointly employ one employee?

Yes. Two or more employers may be a "joint employer" of an employee under the law where they each have some control over the work or working conditions of the employee. Joint employers may be separate and distinct entities with separate owners, managers, and facilities. For example, a subcontractor and the business with which it contracts may be the joint employers of an employee.

13. What is a "temporary help firm"?

The term "temporary help firm" means 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."

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

Generally, every joint employer is responsible, individually and jointly, for compliance with all applicable provisions of the Paid Safe and Sick Leave Law and payment of any penalties for violation of the Paid Safe and Sick Leave Law.

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

15. What factors should be 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 whether the employer exercises some control over the work or working conditions of an employee. Factors DCA will consider include but are not limited to whether:

1. The employer established policies or practices related to the employment, supervision, and/or working conditions of the employee.
2. The employer has the power to hire and fire the employee.
3. The employer supervises and controls the employee's work schedule or conditions of employment.
4. The employer determines the rate and method of payment.
5. The employer maintains the employee's employment records.
6. The employee uses the employer's premises and equipment.
7. The employee performs discrete work that is integral to the employer's production or work.
8. The employee works exclusively or predominantly for the employer.
9. The employer provides training to the employee.

16. 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 as long as five or more of these employees work more than 80 hours per calendar year in New York City.

Example: An employer employs four workers from a temporary help firm as well as three permanent workers, 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 as long as five or more of these employees work more than 80 hours per calendar year in New York City.

17. 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 jointly 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 Paid Safe and Sick Leave Law.

Scenario:

Maria is a garment worker employed by a contractor (ABC Corp.) to assemble garments for a manufacturer (XYZ Corp). ABC Corp. and XYZ Corp. are joint employers of Maria. How is Maria covered by the Paid Safe and Sick Leave Law?

Maria does not maintain two different balances of accrued safe and sick leave: one at ABC Corp., one at XYZ Corp. Instead, all of the hours she works for both ABC Corp. and XYZ Corp. are counted as a single employment and, together, her joint employers are only required to provide her with one hour of safe and sick leave for every 30 hours she works.

18. How can employers confirm whether or not the law applies to them?

Employers can contact DCA in the following ways:

- Email PSSL@dca.nyc.gov
- Call 311 (212-NEW-YORK outside NYC) and ask for information about Paid Safe and Sick Leave
- Online Live Chat, available at nyc.gov/BusinessToolbox
- Visit DCA's Office of Labor Policy & Standards at 42 Broadway, 9th floor, New York, NY 10004

Employers can also visit nyc.gov/dca for more information regarding NYC's Paid Safe and Sick Leave Law. DCA is committed to providing employers with clear and easily accessible information to help them comply with the law. The information and guidance provided on our website and our answers to questions are intended as general statements about the law, and are not intended to serve as individualized legal advice addressing specific workplace situations. The facts and circumstances in each employment situation differ and DCA encourages employers to consult with their legal and other advisors.

19. Are there rules or regulations implementing the law?

Yes. Published rules are available at nyc.gov/dca.

III. 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 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 the New York State Labor Law

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
- Government employees (federal, State of New York, City of New York)
- Participants in federal work study programs. Information about federal work study programs is available at the U.S. Department of Education website: <http://www2.ed.gov/programs/fws/index.html>
- Employees whose work is compensated by qualified scholarship programs as that term is defined in the federal IRS Code, 26 U.S.C. § 117. For more information, go to <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleA-chap1-subchapB-partIII-sec117.htm>
- 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 the 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.](#))
- Owners who do not meet the definition of an employee under the New York State Labor Law

3. Does the law cover domestic workers?

Yes. As used in the Paid Safe and Sick Leave Law, “domestic workers” are workers who are directly and solely employed by an individual or private household to provide care for a child; companionship for a sick, convalescing, or elderly person; housekeeping; or any other domestic service in a home or residence. Examples of domestic workers include nannies and housekeepers.

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 safe and sick leave

under City law. This safe and sick leave is in addition to the three days of paid rest to which domestic workers are entitled under Section 161(1) of New York State Labor Law.

The term “domestic worker” does *not* include workers who are employed by an agency and provide service as an employee of that agency, regardless of whether they are jointly employed by an individual or private household in the provision of service. These workers are considered regular employees under the law and accrue paid safe and sick leave in the same manner as all other employees.

Go to nyc.gov/dca where DCA provides guidance for domestic workers and other workers.

4. Does the law cover in-home workers who are paid by an agency?

Yes. These workers are considered regular employees under the law and accrue paid safe and sick leave in the same manner as all other employees, even if they are jointly employed by an individual or private household in the provision of service.

Go to nyc.gov/dca where DCA provides guidance for workers.

5. Does the law apply to per diem and on call employees?

Yes. If per diem and on call employees are not otherwise excluded—such as, for example, independent contractors or exempted physical therapists, occupational therapists, speech language pathologists, or audiologists—they will qualify for safe and sick leave under the law if they work more than 80 hours in New York City in a calendar year for their employer.

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 only for hours they have been scheduled to work. Being “scheduled to work” does not include shifts for which an employee has been asked to be available or on call, unless the employee is required to remain on call on the employer’s premises.

Scenarios:

Laura has worked more than 80 hours for her employer, and her start date was over 120 days ago. Laura’s employer calls to offer her a per diem shift that same day to cover for a regular employee who is out sick. Laura responds that she herself feels sick and cannot work. Is her employer required to allow her to use accrued safe and sick leave?

No. Laura was not scheduled to work, so her employer is not required to allow her to use safe and sick leave under the Paid Safe and Sick Leave Law.

Scenarios continued:

Felice's employer offers her a per diem shift five days before the day of that shift. She accepts the offer. The day after Felice accepts the offer, she schedules a doctor's appointment 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.

Peter has worked more than 80 hours for his employer and his start date was over 120 days ago. Peter is a per diem employee who chooses which days he will work by calling in to his employer on any given day and requesting to be sent out to work. Peter calls in one day and states he would like to work that day but can only work part of the shift because he has a doctor's appointment scheduled halfway through the day. Is his employer required to allow him to use leave for sick leave purposes?

No. Peter was not scheduled to work, so his employer is not required to allow him to use sick leave. Peter's employer may have a policy that allows employees to work only part of a shift while also allowing use of sick leave, but that would be a more generous policy than the law requires.

7. Will an employee who contacts DCA be asked about immigration status or legal right to work?

No. DCA will answer employee questions and process safe and sick leave complaints without regard to immigration status. All workers have the same rights and protections under the Paid Safe and Sick Leave Law, regardless of immigration status.

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

Yes, but only if the employee works 80 or more hours in New York City during a calendar year. Only the hours that an employee works in New York City count toward the 80 hours, and the employer is only required to provide safe and sick leave for hours the employee spends working in New York City.

Scenario:

Jessica works 25 hours in New Jersey and 60 hours in New York City in a calendar year. Is Jessica covered by the Paid Safe and Sick Leave Law?

No. The 25 hours that Jessica works in New Jersey do not count toward the required minimum (more than 80 hours of work in New York City) for the purposes of coverage under the Paid Safe and Sick Leave Law.

9. Are independent contractors 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. Workers may meet the legal standard for classification as employees even if they are considered independent contractors by their employers. For example, just because an employer issues a 1099 tax form to a worker, has a worker sign a contract stating he or she is an independent contractor, or rents a work space to a worker (such as a chair in a salon), that does not necessarily mean the worker is actually an independent contractor.

More information is available from the New York State Department of Labor at labor.ny.gov. Search “Independent Contractors.”

10. If individuals believe their employers misclassified them as independent contractors and they are entitled to safe and sick leave, can they file a complaint with DCA?

Yes. Employees who believe they have been misclassified as independent contractors may file a complaint with DCA. DCA will investigate and make a determination as to whether or not the individual is covered by the Paid Safe and Sick Leave Law.

11. Are supervisors and managers covered by the law?

Yes.

12. Does an employer have to provide safe and sick leave to employees who telecommute?

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

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

13. 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. See [FAQs about joint employers in II. GENERAL QUESTIONS](#).

Scenario:

For the past three years, Mary has worked as a cashier on weekends at a restaurant in Manhattan and as a full-time receptionist for a nonprofit in the Bronx during the rest of the week. Must both employers provide safe and sick leave?

Yes, as long as Mary works 80 or more hours in a calendar year for each employer. Both the restaurant and the nonprofit must provide safe and sick leave, and Mary can accrue safe and sick leave with both employers.

14. 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 New York 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 New York City.

15. Are employees covered by collective bargaining agreements covered by the law?

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 the case of the amendments to the law that expanded the definition of family member and added safe leave uses, May 5, 2018, until that collective bargaining agreement expires. For employees covered by a collective bargaining agreement that came into effect or renewed after April 1, 2014 or May 5, 2018, the law does not apply 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. Otherwise, the law applies to these employees.

Exception: For employees in the construction or grocery industry covered by a collective bargaining agreement that came into effect after April 1, 2014, or, in the case of safe leave uses, May 5, 2018, 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.

IV. RIGHT TO SAFE AND SICK LEAVE – HOURS, ACCRUAL

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

Employees began to accrue sick leave on April 1, 2014 or on their first day of employment, whichever is later. After May 5, 2018, accrued leave may be used for safe and sick leave purposes.

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

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

Employers must give employees up to 40 hours of safe and sick leave every calendar year. Earned leave may be used by eligible employees for safe or sick leave purposes.

Exception: Employers must give domestic workers—workers who are directly and solely employed by an individual or private household to provide care for a child; companionship for a sick, convalescing, or elderly person; housekeeping; or any other domestic service in a home or residence—two days of paid safe and sick leave after one year of employment. This leave is in addition to the three days of paid rest to which workers are entitled under New York State Labor Law. Altogether, employers must give domestic workers a minimum of five (5) days per calendar year of combined leave. Go to labor.ny.gov and search “Domestic Workers’ Bill of Rights.” Go to nyc.gov/dca where DCA provides guidance for domestic workers.

3. How does safe and sick leave accrual work under the law?

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

Exception: Accruals for domestic workers—workers who are directly and solely employed by an individual or private household to provide care for a child; companionship for a sick, convalescing, or elderly person; housekeeping; or any other domestic service in a home or residence—follow New York State Labor Law. Go to labor.ny.gov and search “Domestic Workers’ Bill of Rights.” Under City law, domestic workers are entitled to two days of paid safe and sick leave after working for the same employer for at least one year.

Go to nyc.gov/dca where DCA provides guidance for all workers.

4. Can on call workers accrue safe and sick leave while on call?

If an employee is scheduled and available to work for an on call shift and is compensated for the scheduled time regardless of whether the employee works, the scheduled time constitutes hours worked for the purposes of accrual under the law.

5. 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.

6. 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.

7. 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 shall base the hours of safe and sick leave used upon the hours worked by the replacement employee for the same shift. If this method is not possible, the hours of safe and sick leave must be based on the hours worked by the employee when the employee most recently worked the same shift in the past.

8. Does an employee earn safe and sick leave during a probationary period?

Yes.

9. When can an employee start using safe and sick leave?

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

Employees could start using accrued safe leave on May 5, 2018 or 120 days after the start of employment, whichever is later.

Exception: Domestic workers—workers who are directly and solely employed by an individual or private household to provide care for a child; companionship for a sick, convalescing, or elderly person; housekeeping; or any other domestic service in a home or residence—can start using safe and sick leave beginning on the next date that they are entitled to their paid day or days of rest under New York State Labor Law and annually thereafter on that date. Go to labor.ny.gov and search “Domestic Workers’ Bill of Rights.”

10. What happens to safe and sick leave that an employee has accrued but hasn’t used at the end of the calendar year?

Up to 40 hours of unused safe and 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 safe and sick leave per calendar year.

11. If a new employee begins work when there are fewer than 120 days left in the employer's calendar year, must the employer carry over the employee's accrued safe and sick leave into the next calendar year?

Yes. If a new employee begins work when there are fewer than 120 days left in the employer's calendar year, the employer must carry over the employee's accrued safe and sick leave into the next calendar year. After 120 days, the employee can use accrued safe and sick leave.

12. 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 hours of safe and sick leave per calendar year. Note that the employee continues to accrue leave at the rate of one hour for every 30 hours worked. A maximum of 40 hours of accrued leave can be carried over to the next calendar year and will be available for immediate use.

Example: An employee accrues 40 hours of safe and sick leave in Calendar Year One and uses 20 hours of safe and sick leave in Calendar Year One. She carries over 20 hours to the next calendar year, accrues 40 hours, and does not use any hours in Calendar Year Two. Her safe and sick leave balance at the end of the second year is 60 hours (20 hours from Calendar Year One plus 40 hours from Calendar Year Two). She may carry over 40 of those 60 hours into Calendar Year Three and accrue another 40 hours in Calendar Year Three. Her employer is only required to allow her to use 40 hours of leave in Calendar Year Three.

13. 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 them for the unused accrued safe and sick leave AND the employer front-loads 40 hours, i.e., provides the employee with 40 hours of paid safe and 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. OR
- The employer front-loaded 40 hours of safe and sick leave at the beginning of the calendar year and will front-load 40 hours of safe and sick leave on the first day of the new calendar year. Note that an employer that switches from an accrual system to a front-load 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, she gets the flu. Can Paulina use leave for sick leave purposes?

Yes, Paulina can take 40 hours of safe and sick leave right away—her earned hours of safe and sick leave carry over to the new calendar year. Note that Paulina's employer does not have to let her use more than 40 hours of safe and sick leave in the new calendar year, but Paulina may accrue up to 40 hours of safe and sick leave in the new calendar year.

14. 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 to care for themselves or loved ones without fear of retaliation from their employer. In enacting the law in 2014, 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. In enacting safe leave amendments in 2018, the City is now making sure that survivors of sexual assault, domestic violence, and human trafficking can use their leave to take steps toward safety without fear of penalty. 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.

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

When unused safe and 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 safe and sick leave.

16. Can an employer have a policy that front-loads 40 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 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.

17. Can an employer front-load 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 one hour of safe and sick leave for every 30 hours the employee is anticipated to work. However, if the employer front-

loads fewer than 40 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 one hour for every 30 hours worked until the total amount of front-loaded plus accrued safe and sick leave in a calendar year equals 40 hours. Employees who are front-loaded less than 40 hours in a calendar year must be allowed to use up to 40 hours of safe and sick leave in a calendar year if they have accrued it. An employer who front-loads fewer than 40 hours must allow employees to carry over up to 40 hours of unused safe and sick leave into the new calendar year, in addition to front-loading the amount of time 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.

18. If an employer wants to front-load safe and sick leave for a full-time employee at the time of hire, must they front-load 40 hours of safe and sick leave if the employee is not projected to accrue 40 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. To avoid tracking accruals, the employer would need to front-load the full 40 hours.

19. 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.

20. How does safe and 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, 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.

21. 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.

22. 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?

For the purposes of this law, the "calendar year" is any consecutive 12-month period of the employer's choosing. Accrual and carryover must be based on the calendar year for all employees unless the employer has a more generous policy that allows employees to accrue the leave required by the law at a faster rate than the law requires.

23. 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.

24. If an employee is reinstated by an employer within six months of separating from that employer, must the employee wait 120 days after resuming employment with the employer to begin using accrued safe and sick leave?

No. If an employee is rehired within six months, upon restarting employment, the employee shall receive credit for at least the previous calendar days worked toward the 120-day waiting period.

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 after the 120-day waiting period is over.

26. What does the law require of employers who rehire employees 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 reemployment and would not be eligible to use safe and sick leave for 120 days after recommencing employment with the employer.

In a situation where an employee returns after an absence of more than six months but within the same calendar year of working for the employer previously, then all work for that employer within the calendar year must be included in determining whether the

employee has worked more than 80 hours and is eligible for safe and sick leave under the law.

27. If an employee is transferred to another division or location of the same employer in New York City, is the employee entitled to safe and sick leave that was 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. If the new employer has fewer than five employees, and the former employer had more than five employees, the employee is entitled to use and be paid for up to 40 hours of unused safe and sick leave earned while working for the former employer, until such safe and sick leave is exhausted.

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 the employer?

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 law?

Yes. Employers may provide for more generous leave.

V. USE OF SAFE AND SICK LEAVE

1. 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.

Note: Employers may only require documentation for absences of more than three consecutive workdays.

2. 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.

3. For what reasons can an employee use safe and sick leave?

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

- They have a mental or physical illness, injury, or health condition; they need to get a medical diagnosis, care, or treatment of a mental or physical illness, injury, or condition; they 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.
- 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 them, 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 their safety or that of 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; and
 - attend civil or criminal court dates related to any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking.

For information, resources, and organizations that can assist those experiencing intimate partner violence, stalking, and trafficking, please contact NYC Hope by:

- Calling 1-800-621-HOPE (4673)
- Visiting the NYC Hope website nyc.gov/nychope

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

The law recognizes the following individuals as “family members:”

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

Scenarios:

Luis moved to New York from Puerto Rico 20 years ago. His grandmother’s friend, Mariana, has always treated him like family, having him over for dinner every Sunday and during holidays and helping to care for Luis’s children. Luis has always referred to her as his “second grandmother” and frequently accompanies her to doctors’ appointments. Is Mariana Luis’s “family member” under the Paid Safe and Sick Leave Law?

Yes. Mariana and Luis are considered family members under the Paid Safe and Sick Leave Law because they share a close relationship like a family relationship even though they are not related by blood and have never lived together.

Scenarios continued:

Winston and Chantay are parents to a five-year-old daughter, Anya. They never married and do not live together. Anya lives with Chantay during the week and with Winston on the weekends. Are Winston and Chantay “family members” under the Paid Safe and Sick Leave Law?

Yes. The fact that Winston and Chantay have a child together means that they are family members under the Paid Safe and Sick Leave Law despite not living together or currently being in an intimate relationship.

5. How does the law define a covered “domestic partner”?

Under the law, a “domestic partner” is a person with a domestic partnership registered under Section 3-240 of the NYC Administrative Code. For more information about the requirements and procedure for registering as domestic partners, go to http://www.cityclerk.nyc.gov/html/marriage/domestic_partnership_reg.shtml.

Note: Same-sex marriage is now legal in all states and territories of the United States, including the District of Columbia, as per the Supreme Court’s decision in the case of Obergefell v. Hodges.

6. 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.

7. What is “preventive medical care”?

Preventive medical care typically is routine health care that includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems. For examples of preventive care for adults, women, and children, go to HealthCare.gov, a federal government website: <https://www.healthcare.gov/what-are-my-preventive-care-benefits/>.

8. 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

9. 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.

10. 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.

11. 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.

12. Where can I get help for someone who has experienced an act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking but was denied safe leave?

For information, resources, and organizations that can assist those experiencing intimate partner violence, stalking, and trafficking, please contact NYC Hope by:

- Calling 1-800-621-HOPE (4673)
- Visiting the NYC Hope website nyc.gov/nychope

In an emergency, call 911.

For assistance with any workplace-related issues, please contact DCA's Office of Labor Policy & Standards (OLPS) by:

- Calling 311 and saying "Paid Safe and Sick Leave" OR
- Emailing olps@dca.nyc.gov

OLPS will be able to assist you, regardless of immigration status, and will not disclose your identity without your consent, unless otherwise required by law.

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

Yes.

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

A mother can use earned leave during any period of sickness or disability following the birth of her child. The other parent can use earned 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.

Parents cannot use safe and 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."

Employees in New York State have access to paid family leave to bond with a newly born, adopted, or foster child; to care for a close relative with a serious health condition; or to assist loved ones when a family member is deployed abroad in active military services. More information on the New York State Paid Family Leave policy is available here: <https://www.ny.gov/programs/new-york-state-paid-family-leave>.

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

Generally, it should be the employee who decides how much accrued safe and sick leave to use. Employers can set a minimum daily increment up to four hours and cannot be required to provide more than 40 hours of safe and sick leave in a calendar year.

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

Yes. The law allows an employer 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 an employee 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 a minimum of four hours of safe and sick leave.

Juan Carlos was hired by Papa’s Pizzeria more than 120 days ago, but he has worked only 90 hours, so he has accrued only three hours of safe and sick leave. 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 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 a four-hour minimum increment of safe and sick leave used 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 if Anya could appear to work before 12:00 p.m., her employer can require her to use four hours of safe and sick leave, in which case Anya should appear for work by 12:00 p.m.

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

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 a four-hour minimum increment of safe and sick leave used per day and that employees must use safe and sick 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 a four-hour minimum increment of safe and sick leave used per day and that employees must use safe and sick 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 a four-hour minimum increment of safe and sick leave to be used. 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 policy requires employees to use safe and sick leave in half-hour intervals that start on the hour or half-hour.

Xian is scheduled to work a 10-hour shift at Bo's Bakery. As required under his employer's policy, he provides notice in the morning that he must take the whole day off to care for a sick child who cannot go to school. Must Bo's Bakery allow Xian to use leave for sick leave purposes?

Yes. Xian's employer must allow him to use 10 hours of accrued safe and sick leave.

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

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

19. 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.

20. 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 as makeup for 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.

21. 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 an employee to find a replacement employee in order to use safe and sick leave.

22. 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. If employees voluntarily agree to work from home or telecommute, employees would retain the paid or unpaid safe and sick leave that they have accrued.

23. 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.

24. 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 that employer, within 14 days of the effective date of

any policy change, and upon employee request. The written safe and sick leave policy must explain at a minimum:

- The amount of safe and sick leave and when an employee can begin using safe and sick leave ***if an employer provides 40 hours of paid safe and sick leave for use on or before the 120th day of employment and on the first day of each new calendar year thereafter***
- When accrual of safe and sick leave starts, the rate at which an employee accrues safe and sick leave, and the maximum number of hours an employee may accrue in a calendar year ***if an accrual system is used***
- 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 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 carry-over 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 the leave the employer provides to meet the requirements of the law, the policy must state that employees may use the leave for safe and sick leave purposes without any condition that the Paid Safe and Sick Leave law prohibits
- A statement that the employer cannot require that employees or a health care or service provider disclose personal health information or the details of the matter for which an employee requests safe leave under the Paid Safe and Sick Leave Law, and that an employer must keep information about an employee or an employee's family member obtained solely because of the Paid Safe and Sick Leave law confidential unless the employee consents to disclosure in writing or disclosure is required by law

Note: An employer's written safe and sick leave policy 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 a written safe and sick leave policy.

25. If employers require an employee to provide advance notice of the need to use safe and sick leave, must employers explain this requirement in their written safe and sick leave policy?

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

26. 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 he or she will need to use safe and sick leave, such as a doctor's visit or a court appointment.

If the need for safe and sick leave is foreseeable, the employer can require up to seven days advance notice, in writing, of an employee's intention to use safe and sick leave. An employer must have a written policy outlining how notice is to be provided if employees will be required to provide reasonable notice for foreseeable uses of safe and sick leave.

27. 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 an employee requires time to care for, or obtain medical treatment for, themselves or a family member 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 an employee requires time to seek assistance or take other safety measures for themselves or a family member 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.

28. 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 policy the procedure for providing notice of an unforeseen use of safe and sick leave, and the procedures must be reasonable. Examples of 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 identified by the employer. The procedures for providing notice of the need for safe and sick leave when the need is unforeseeable may not include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using safe and sick 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.

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

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 a written policy with 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 of any safe and sick leave. Theresa works nights and calls out because she is caring 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 the need for 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 and sick leave purposes as soon as practicable. Manufacturing Inc.'s safe and sick leave policy did not meet the law's minimum requirements because it applied to unforeseeable uses of safe and sick leave.

30. How must an employer provide the written notice of safe and sick leave policies to employees?

Employers must distribute written safe and sick leave policies personally when an employee begins employment with that 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 its own written safe and sick leave policy.

31. 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, health care provider or social service provider, to disclose the reason for safe or 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, 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 for the employee to submit written verification that the employee used safe and sick leave for safe and sick leave purposes. A model form that employers can use to verify use of safe and sick leave is available at nyc.gov/dca

Scenario:

Eun tells her supervisor that she needs three days 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 to handle housing and legal matters. Can Eun's supervisor require her to provide more information about her need to take safe and sick 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. Under the Paid Safe and Sick Leave Law, Eun's employer may not request any more information about her need to take leave.

32. 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 a written policy that the employee received prior to using the sick leave. "Workdays" means the days or parts of days the employee was scheduled to work had the employee not used sick leave. The employer can require the employee to provide written documentation signed by a licensed health care provider confirming both (1) the need for the amount of sick leave taken and (2) 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. Disclosure may be required by other laws. See [VIII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME](#).

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

Yes, but only if the employee uses more than three consecutive workdays as safe leave and only if that requirement is part of a written policy 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.

34. How much time must an employer allow 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 he or she returns to work to submit the documentation. The employee is responsible for the cost of such documentation not covered by insurance or any other benefit plan.

35. Can an employer require documentation if the safe and sick leave is not for more than three consecutive workdays?

No. An employer can ask for 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 or less than three consecutive workdays as safe and sick leave. A workday does not need to be a “full” day if the employee works part time. A model employee verification form is available at nyc.gov/dca

Scenario:

Bill’s work schedule is three hours per day on Monday, Tuesday, Wednesday, and Friday. He uses leave for safe and sick leave purposes for these four days. Can his employer require documentation?

Yes. Bill used safe and sick leave for four consecutive workdays. His employer can require documentation from a licensed health care professional.

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

Yes, the 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.

37. 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.

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

Generally, no.

An employer cannot require an employee or their health care provider to specify the nature of the employee's or the employee's family member's injuries, illness, or condition, except as required by law.

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.

However, disclosure may be required by other laws.

39. Does an employer have to keep information about 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 this law confidential unless the employee consents to disclosure in writing or disclosure is required by law. 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. For more information, visit: <https://www1.nyc.gov/site/cchr/law/the-law.page>

VI. 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 paid safe and sick leave is taken.

Under no circumstance can an employer pay an employee less than the full minimum hourly wage under section 652(l) of the New York State Labor Law for paid safe and sick leave. For updates and other information on the minimum wage, go to labor.ny.gov and search "Minimum Wages."

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's wage is based on tips or gratuity?

The employer must pay the employee at least the full minimum wage.

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

No. Employees are not entitled to lost tips or gratuities during use of safe and sick leave. The employer must pay the employee at least the full minimum wage for hours taken as 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 in determining the employee's rate of pay for paid 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.

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 Paid Safe and Sick Leave Law?

No. The employer must comply with the law regardless of how 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?

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 and 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?

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 safe and sick leave.

10. How much does an employer have to pay an employee for paid 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 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?

If an employee is paid at a flat rate, regardless of the number of hours the employee worked, to calculate the employee's rate of pay for paid safe and sick leave, 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 amount 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 employers determine the amount of safe and sick leave used and required to pay for employees who routinely have jobs, assignments, projects, or shifts of varying or indeterminate lengths?

For work or shifts of an indeterminate length (e.g. shift until closing 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, the hours of safe and sick leave should be

based 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 paid safe and sick leave be paid after it has been taken?

Leave for safe and sick leave purposes must be paid no later than the payday for the next regular payroll period beginning after the safe and sick leave was used by the employee, unless the employer has asked for written documentation or verification of use of safe and sick leave from the employee. In that case, the employer is not required to pay safe and sick leave until the employee has provided such documentation or verification.

An employer cannot delay payment of safe and sick leave beyond the next regular payroll period beginning after the safe and sick leave was used if the employer's written safe and sick leave policies do not include the requirement of providing documentation for more than three consecutive workdays of safe and sick leave, the time and manner in which the documentation must be provided, 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 that is required to provide paid safe and sick leave cannot require an employee to pay for all or part of that leave.

VII. 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 all of the requirements of the law and can be used for the purposes of safe and 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 safe and sick leave if the vacation or personal leave days can be used for safe and sick leave and the employer's policies meet all requirements of the law.

Scenario:

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

It depends. Laces Shoe Store does not need to provide safe and sick leave in addition to the 40 hours of paid vacation that they already provide employees, if the store allows employees to use the vacation time in the same way they would safe and sick leave under the law. For example, if Laces Shoe Store does not allow employees to use vacation time to address unforeseen health or safety concerns when employees need to be absent from work, the vacation time Laces Shoe Store offers is not sufficient to satisfy the requirements of the law.

If an employee has already accrued leave under a leave policy that was in existence prior to the effective date of the Paid Safe and Sick Leave Law, such 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.

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 safe and 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 safe and 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 safe and sick leave for every 30 hours worked or provides full-time employees with 40 hours of safe and sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of safe and sick leave at the beginning of the calendar year based on a rate of at least one hour of safe and sick leave for every 30 hours worked.
- Allows employees to use up to 40 hours of accrued safe and sick leave in a calendar year.
- Permits accrued safe and 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 safe and sick leave for the same reasons and under the same conditions that safe and 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, child or parent of a spouse or domestic partner, grandchild, grandparent, sibling, any other individual related by blood to the employee, and any individual whose close association with the employee is the equivalent of family).

- Does not impose limitations, conditions, or requirements on the use of safe and sick leave beyond those in the law. For example, an employer cannot require unreasonable notice for the use of safe and sick leave or require an employee to take leave in a minimum daily increment of more than four hours.
- Permits employees to carry over up to 40 hours of unused safe and sick leave to the next calendar year unless the employer provides full-time employees with 40 hours of safe and sick leave at the beginning of the calendar year and part-time employees with up to 40 hours of safe and sick leave at the beginning of the calendar year based on a rate of at least one hour of safe and sick leave for every 30 hours worked.
- 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 an employee to use safe and sick leave without retaliation, such as threats, discipline, demotion, reduction in hours, or termination, and does not interfere with an employee's ability to file 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 documenting compliance with the law and rules implementing the law. For example, an employer should maintain a copy of its leave policy and payroll or other records that show employees' safe and sick leave use and accrual. In addition, the law requires that all employers maintain signed copies of the Notice of Employee Rights or receipts that demonstrate that the employer gave employees the required notice. See [XI. EMPLOYER RECORD KEEPING](#).

4. An employer has a safe and 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 safe and sick leave to an employee who used all safe and sick leave prior to April 1, 2014?

No. The employer would not be required to provide that employee with more safe and 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.

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

Yes. The law provides the minimum safe and sick leave requirements with which covered employers must comply. The law also expressly encourages employers to provide more generous leave policies. As long as an employer gives all employees at least the benefits to which they are entitled under the law, the law does not prohibit the

employer from providing only one group of employees—for example, only full-time employees—with more generous safe and sick leave benefits. An employer must ensure, however, that its policies do not violate any other laws or regulations that may apply.

6. Can an employer make exceptions to its written safe and sick leave policy?

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.

VIII. OTHER FEDERAL AND STATE LAWS RELATED TO LEAVE TIME

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

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 precedence when they require employers to do more than the City's Paid Safe and 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 a leave of absence to an employee with a disability that is longer than the amount of safe and sick leave an employer must allow under the Paid Safe and 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 Safe and 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 Safe and 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 Safe and Sick Leave Law at the same time by allowing time off with pay. Moreover, leave an employer provides under the Paid Safe and 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 Safe and 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. What is the difference between the New York State Paid Family Leave Law and New York City's Paid Safe and Sick Leave Law?

The New York State Paid Family Leave Law provides qualified employees with eight (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 is set to increase in 2019, 2020, and 2021. For more information regarding the New York State Paid Family Leave Law, visit <https://www.ny.gov/programs/new-york-state-paid-family-leave>.

5. 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 federal or state law, such as the FMLA.

IX. RETALIATION

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

No. Retaliation is illegal. An employer cannot retaliate against employees or prevent them from exercising or attempting to exercise rights under the law, including:

- Requesting and using safe and 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.
- Informing another person of that person's potential rights.

2. What is retaliation?

Retaliation is any act that is reasonably likely to deter an employee from exercising rights guaranteed under the law and includes threatening, harassing, intimidating, disciplining, discharging, demoting, or suspending an employee, or reducing employee

hours. For example, an employer who physically threatens an employee outside of the workplace may be found to be committing a retaliatory act.

Retaliation is established when DCA shows that a protected activity was a motivating factor for a retaliatory act, even when other factors also motivated the adverse employment action. Employees do not need to explicitly refer to the Paid Safe and Sick Leave law to have experienced retaliatory action under the law.

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

Yes.

X. NOTICE TO EMPLOYEES

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

Yes. Employers must give the updated Notice of Employee Rights created by DCA to covered new employees when they begin employment and to covered existing employees by June 4, 2018. The updated notice includes safe leave amendments, which took effect May 5, 2018. The amendments do not require an employer to provide additional time off for safe leave; instead, they require employers to allow employees to use earned leave for safe leave purposes.

The written notice must include:

- 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 is available at nyc.gov/dca. On the notice, DCA encourages employees to keep a copy of the notice and all documents that show amount of safe and sick leave and safe and sick leave accrual and use.

2. What do I do if my employer hasn't given me the Notice of Employee Rights or any other information about paid safe and sick leave?

If you are covered under the Paid Safe and Sick Leave Law, ask your employer about the Notice of Employee Rights and if your employer has been tracking accrual of leave under the law. Your employer can find information about the law and their responsibilities at nyc.gov/dca or by calling 311. If your employer still does not provide the Notice of Employee Rights or isn't accruing leave, please file a complaint with DCA at nyc.gov/dca or by calling 311.

3. 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 are required to 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.

4. In what language must the 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 DCA website, the employer must also provide the notice in the employee's primary language and the language spoken by at least 5 percent of the workers.

5. How should the employer provide the Notice of Employee Rights to employees?

The employer must 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 individually delivering the notice to employees.**

6. 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 are good ways to document that employers gave employees the required notice.

7. Does the Notice of Employee Rights 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 delivering the notice to the employee.

8. Must an employer with safe and 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/dca so that employees are aware of their minimum rights under the Paid Safe and Sick Leave Law.

Note: The Paid Safe and Sick Leave Law sets the minimum requirements for safe and 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 [VII. OTHER TIME OFF POLICIES](#).

XI. EMPLOYER RECORD KEEPING

1. What records must an employer keep?

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

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 detail:

- The employee's 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 laws and regulations
- Hours worked each week by the employee, unless the employee is exempt from the overtime requirements of New York State labor laws and regulations and has a regular workweek of 40 hours or more
- The date and time of each instance of safe and sick leave used by the employee 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

The employer must keep health information obtained confidential unless the employee permits disclosure or disclosure is required by law.

2. How long must employers keep their records?

Employers must keep and maintain records, including employment, payroll, and timekeeping records, documenting their compliance with the requirements of the law and associated rules for at least three years, unless otherwise required under law.

The 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.

3. When must employers make records available to DCA?

Employers must make the records available to DCA upon notice or at an agreed upon time of day.

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

An employer's failure to maintain or produce a record that is required to be maintained under the Paid Safe and Sick Leave Law may subject the employer to civil penalties and, if relevant to a material fact alleged by DCA, will create a reasonable inference that the material fact is true.

5. Must an employer include accrued safe and sick leave and use on an employee's wage statements ("pay stubs")?

No. The law does not require employers to provide safe and sick leave information on pay stubs. Employers are, however, required to maintain documents demonstrating compliance with the law, and including this information on pay stubs may be a good way to do so. Employers may choose to include this information with the information they are required to provide on pay stubs under the New York State Wage Theft Prevention Act (WTPA), New York State Labor Law Section 195(3). For more information on the WTPA, go to <https://labor.ny.gov/formsdocs/wp/P715.pdf>.

6. 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 DCA and as long as health information obtained solely for the purpose of the employee using safe and sick leave is kept confidential unless the employee permits disclosure or disclosure is required by law.

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

No. The Paid Safe and 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 (EEOC website) and www.irs.gov/Businesses (IRS website).

XI. COMPLAINTS

1. Can employees file a complaint?

Yes. Employees can file complaints with DCA, which is the agency designated to enforce the Paid Safe and Sick Leave Law. The complaint form is available online at nyc.gov/dca or by contacting 311 (212-NEW-YORK outside NYC).

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

The Mayor can designate another agency to handle complaints.

2. What is the timeline for complaints?

DCA must investigate complaints alleging violations within two years from the date employees knew or should have known of the violation that prompted them 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. Generally, the employer must respond to DCA within 30 days and provide the information DCA requests.

4. What will DCA do with complaints?

DCA investigates complaints to identify any potential violation of the Paid Safe and Sick Leave Law. If, as a result of its investigation, DCA believes a violation of the law has occurred, DCA will work with the employer to come into compliance and attempt to resolve the case without a hearing. If these negotiations do not result in a resolution that is acceptable to DCA, DCA may issue a Notice of Hearing and pursue appropriate remedies in an administrative tribunal.

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

Yes. DCA will keep the identity of complainants and witnesses confidential unless disclosing their identity is necessary to resolve the investigation or is otherwise required by law. DCA will notify complainants before disclosing their identity whenever possible and generally attempts to keep identities of parties confidential unless they consent.

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

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

7. How will DCA ensure compliance?

DCA will achieve compliance through outreach and education and resolving noncompliance through settlement where possible and, whenever necessary, enforcing the Paid Safe and Sick Leave Law at administrative hearings. DCA's enforcement authority is described in [XIII. ENFORCEMENT](#).

XII. ENFORCEMENT

1. What agency enforces the law?

DCA enforces the law.

2. Will DCA conduct routine patrol inspections of employers under the Paid Safe and Sick Leave Law?

No. The law allows DCA 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:

DCA may conduct on-site inspections without 30 days' notice in certain limited circumstances. These include circumstances when DCA 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 DCA to arrange a mutually agreeable time of day, DCA may set a time for an inspection upon two days' advance notice.

3. Can DCA issue subpoenas?

Yes. DCA may issue subpoenas to investigate an employer's compliance with the Paid Safe and Sick Leave Law. If DCA issues a subpoena, DCA must give 30 days' written notice that the employer must provide DCA with access to its records at DCA's offices. If DCA issues a subpoena in the limited circumstances described in Question 2, DCA is not required to give 30 days' written notice.

4. When can DCA begin an enforcement proceeding against an employer for not complying with the Paid Safe and Sick Leave Law?

DCA may initiate investigations into compliance with the Paid Safe and Sick Leave Law upon its own initiative or following a complaint. If, as the result of an investigation, DCA believes an employer is not in compliance with the Paid Safe and Sick Leave Law or a violation of the law has occurred, DCA may issue a Notice of Hearing.

5. Can DCA issue violations for failing to respond to an investigation?

Yes, DCA may issue a Notice of Hearing to an employer who (1) fails to respond to a complaint, (2) fails to provide information requested by DCA in connection with a complaint, or (3) fails to provide records or access to records as part of a DCA investigation. An employer will have opportunities to comply and face reduced or no civil penalties before the first scheduled appearance date.

An employer may "cure" a violation alleged in the Notice of Hearing without penalty by either (1) producing the requested information or records on or before the first scheduled appearance date or (2) resolving to the satisfaction of DCA on or before the first scheduled appearance date the safe and sick leave complaint that was filed against the employer.

Failure to respond to the Request for Information before the appearance date subjects the employer to a penalty of \$500 in addition to any penalties or remedies imposed as a result of DCA's investigation of a complaint.

6. Can DCA conduct safe and sick leave investigations on its own initiative?

Yes. The Paid Safe and Sick Leave Law allows DCA to conduct an investigation on its own initiative when it has reason to believe that an employer's practices warrant investigation.

7. After DCA issues a Notice of Hearing, will employers have an opportunity to settle?

Yes. If an employer receives a Notice of Hearing, the employer has the opportunity to settle the alleged violation without a hearing or to appear before an impartial judge at an administrative tribunal.

8. What happens if an employer chooses not to settle violations and have charges heard before an administrative tribunal?

An impartial 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 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, \$500 and appropriate equitable relief for each time the employer retaliated against the employee for taking safe and 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 safe and sick leave

9. What are the maximum penalties under the law?

In addition to the relief that an employer may be required to provide every employee whose rights have been violated, the law also provides for the following civil penalties that may be imposed against employers for violations of the law:

- Up to \$500 for failure to timely or fully respond to Request for Information 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

10. 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 Paid Safe and Sick Leave 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.

11. 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 application of 40 hours of leave to the employee's safe and sick leave balance, or if the number of hours denied to the employee is known, the number of hours of leave the employee should have accrued must be added to the employee's safe and sick leave balance, provided that such balance does not exceed 80 hours.

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 Paid Safe and Sick Leave Law. However, employees retain any other rights they may have under other local, state, or federal laws.