

# New York and New Jersey Workplace Updates

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## I. New York State Publishes Guidance and FAQs on Paid Sick Leave Law

The New York State Paid Sick Leave Law (the “PSLL” or the “Law”) went into effect on September 30, 2020. The Law covers all employers in New York State and provides employees with at least 40 hours of paid or unpaid sick leave and up to a maximum of 56 hours annually, depending on the size and net income of the employer. See our previous bulletin, [New York Enacts Statewide Paid Sick Leave Law](#).

Recently, the New York State Department of Labor released [Guidance](#) and [FAQs](#) on the PSLL. This new information provides additional insight into many of the Law’s requirements, including:

### Employee Coverage and Leave Provided

- There is no minimum period of employment before an employee can use accrued sick leave.
- Employees who telecommute are entitled to accrued paid sick leave only for the hours they are physically working in New York State, even if the employer is physically located outside New York State.
- When determining an employer’s total number of employees in a calendar year, employers must use the 12-month period from January 1 to December 31.

### Providing and Using Sick Leave

- Employees may use sick leave for treatment of a medical condition or for preventive medical care.
- The maximum increment an employer may set for the use of sick leave under the Law is four hours. An employee may use four hours of accrued sick leave as needed (or less, if an employer allows for smaller increments of such leave usage, such as one or two hours).
- Sick leave under the Law is separate from and in addition to the quarantine leave for employees who are subject to a precautionary or mandatory quarantine related to COVID-19. Use of COVID-19 leave does not impact or otherwise deplete an employee’s PSLL accruals or usage. See our previous bulletin, [New York State Issues Guidance on Its COVID-19 Paid Sick Leave Law](#).
- Unless required by an agreement or policy, including an employer’s leave policy, employers are not required under the Law to pay employees for unused sick leave at the end of the employment relationship.

### Interplay with Other Leave Laws

- New York City may continue to enforce the provisions of the New York City Earned Safe and Sick Time Act to the extent that such provisions meet or exceed the requirements for minimum hours and usage set forth in the PSLL.
- Westchester County law currently provides that domestic workers accrue sick leave at the rate of one hour for every seven days worked, and earn and can use up to 40 hours of paid sick leave per year, regardless of the size of the employer. These benefits will continue to be available to domestic workers in Westchester County.
- The PSLL operates independently from other state and federal leave requirements and must therefore be paid in addition to any other state or federal leave entitlements.

## II. New Jersey Issues Executive Order on Workplace Protocols for COVID-19

On October 28, 2020, New Jersey Governor Phil Murphy signed [Executive Order No.192](#) (the "Order"). The Order requires employers to implement a number of safety measures to protect employees from the workplace dangers posed by COVID-19.

The Order applies to every business, nonprofit, governmental, and educational entity that permits or requires employees to be physically present in the workplace. The Order went into effect on November 5, 2020. The Order includes the following provisions:

### Required Safety Protocols

- Individuals at the worksite must maintain six feet of distance between one another to the maximum extent possible. Employers must provide sanitization materials to employees, customers, and visitors at the employer's expense.
- Employers must ensure that employees practice regular hand hygiene and provide employees with breaks for handwashing and access to handwashing facilities. Employers are permitted to adopt policies requiring employees to wear gloves when at the worksite, but must provide the gloves at the employer's expense.
- Employers must routinely clean and disinfect all high-touch areas in accordance with Department of Health ("DOH") and Centers for Disease Control ("CDC") guidelines.
- Prior to each shift, employers must conduct daily health checks of employees. This can include temperature checks, visual symptom checking and self-assessment checklists.
- Employers must immediately separate and send home employees who appear to have symptoms of COVID-19 and must clean and disinfect the worksite in accordance with CDC guidelines. Employers must also notify all employees of any known exposure to COVID-19 at the worksite.
- The daily health checks and employee notifications must be consistent with the confidentiality requirements of the Americans with Disabilities Act ("ADA"), as well as with guidance from the Equal Employment Opportunity Commission.

### Face Masks

- If the nature of the employees' work or work area does not allow for six feet of distance to be maintained, employees are required to wear a mask, and employers must install physical barriers between employee work spaces whenever possible.
- Employers must provide masks to their employees at the employer's expense, but employees may use their own masks if they prefer. Employees may remove their masks when at their individual workstations and when they are more than six feet apart from other individuals, or when the employee is alone in a walled office.
- Employers may deny entry to employees, customers, or visitors who decline to wear a face mask at work, unless doing so would violate state or federal law, such as the ADA in the case of an employee with a disability that might make wearing a mask impracticable or dangerous to the employee. Employers may require employees requesting an accommodation due to a disability to provide medical documentation to support the employee's claim that he or she cannot wear a face mask. Employers are not permitted to ask customers or visitors entering the worksite to provide such documentation, unless it is otherwise required by federal or state law.

### Exceptions

These requirements do not apply if they interfere with the duties of first responders, emergency management personnel or dispatchers, health care personnel, public health personnel, court personnel, law enforcement and corrections personnel, hazardous materials responders, transit workers, child protection and child welfare personnel, housing and shelter personnel, military employees, and governmental employees engaged in emergency response activities.

### Penalties and Enforcement

- If employers do not comply with the aforementioned requirements, the worksite is subject to closure by the Commissioner of the New Jersey DOH, and further penalties may be imposed on employers, including imprisonment for a term not to exceed six months and/or a fine not to exceed \$1,000.
- Additionally, the Order authorizes the Commissioner of the Department of Labor and Workplace Development ("DOL") to establish an intake mechanism to receive complaints from employees subject to violations of the Order, and to address such complaints and allow employers a chance to fix any violations. The DOL is also directed to

provide compliance and safety training for employers and employees by establishing a program to fund workplace training, notices and informational materials informing employees of their rights and employers of their obligations under the Order.

If you have questions about these updates, please contact **Blythe E. Lovinger** at +1 (212) 407 7770, **Jonathan A. Wexler** at +1 (212) 407 7732 or any other Vedder Price attorney with whom you have worked.

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