



Webinar Series: Guidance on State and Local Paid Sick Leave Laws

Part VI: Navigating New York State Paid Sick Leave Mandates in 2022

February 3, 2022

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an

©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2022 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Joining You Today



Marlin Duro

Associate
Labor & Employment
Seyfarth Shaw LLP

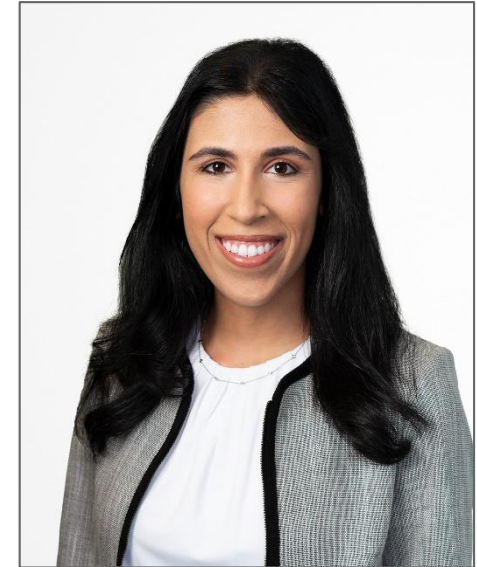
mduro@seyfarth.com



Joshua D. Seidman

Partner
Labor & Employment
Seyfarth Shaw LLP

jseidman@seyfarth.com



Michelle Shamouilian

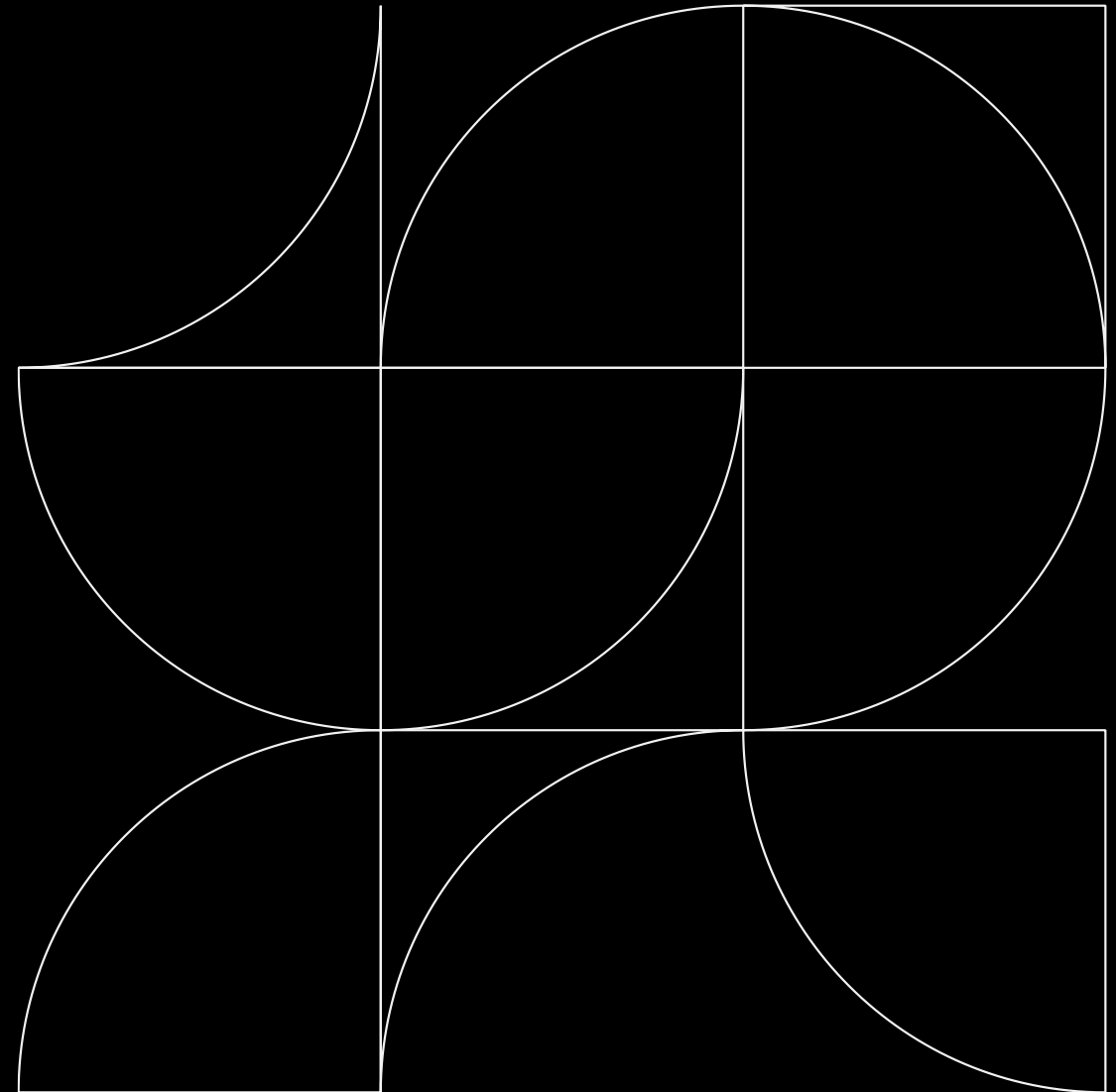
Law Clerk
Labor & Employment
Seyfarth Shaw LLP

mshamouilian@seyfarth.com

Agenda

01	Nationwide Paid Sick Leave Overview
02	New York Paid Leave Law Overview
03	NYS Paid Sick Leave Overview + Final Regulations
04	NYS COVID-19 Emergency Leave Law
05	NYS COVID-19 Vaccine Leave Law
06	Amendments to NYC Earned Safe and Sick Time Act

Nationwide Paid Sick Leave Overview



Mandatory Paid Sick Leave (PSL) and PTO Laws

Total Mandates

As of Feb. 1, 2022:
65 TOTAL PSL & PTO Mandates in the U.S.

- **Why?** Several jurisdictions have enacted multiple mandates.

Ex: General PSL Law + COVID-19 Temporary PSL Law

But the number is constantly changing due to COVID PSL laws

As of Dec. 2020:
Approx. 69 TOTAL Mandates in U.S.

Federal

- **Executive Order 13706**
PSL for many EEs of certain federal contractors
- **Families First Coronavirus Response Act**
Emergency PSL for EEs of certain sized ERs (sunset as of 12/31/2020; reimbursement for voluntary leave option for select ERs **ended** 9/30/2021)

17 States + DC

PSL:

- California
- DC
- Massachusetts
- Connecticut
- Oregon
- Vermont
- Arizona
- Washington
- Rhode Island
- Maryland
- New Jersey
- Michigan
- New York
- Colorado
- New Mexico
- Virginia

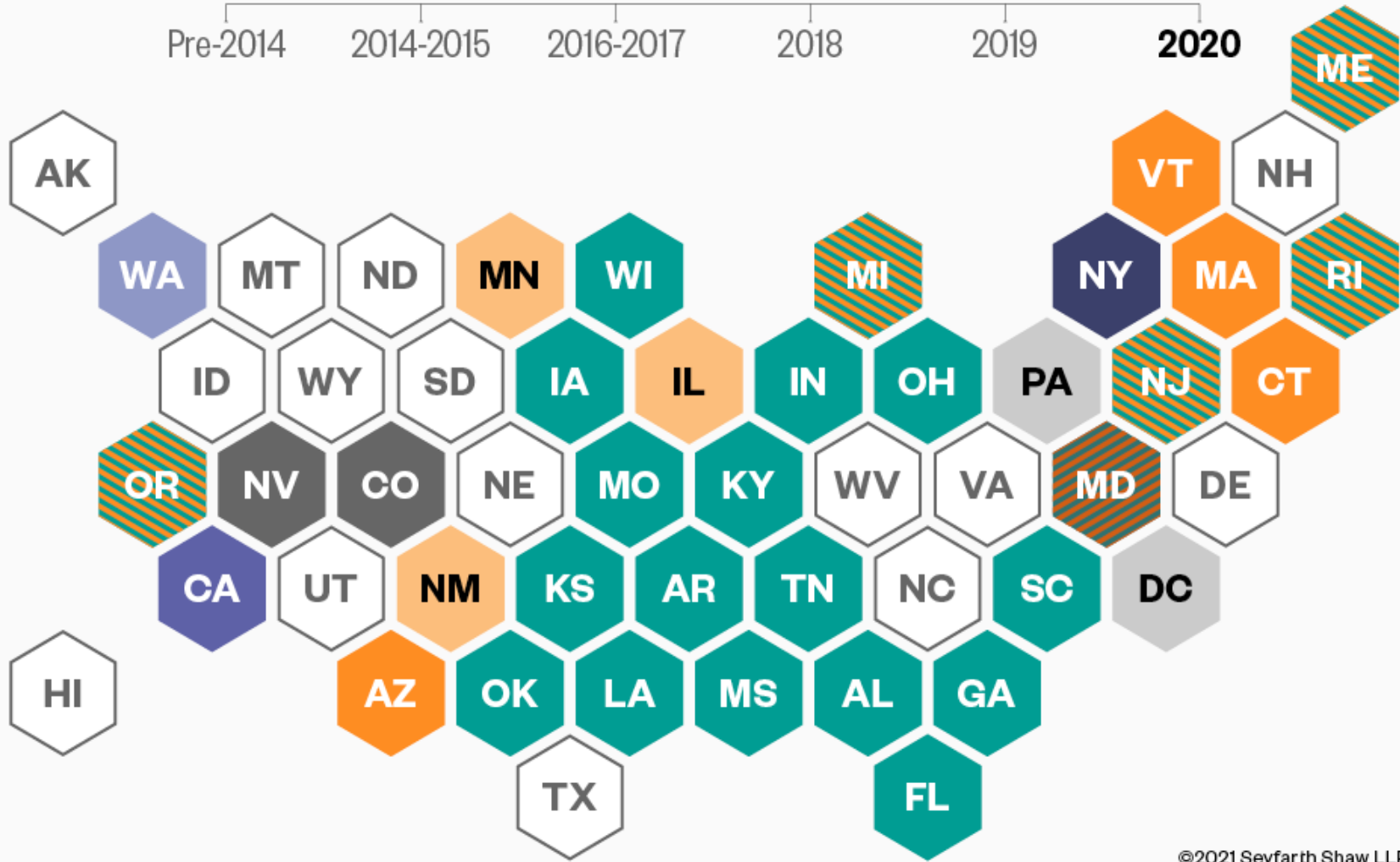
PTO:

- Maine
- Nevada

28 Municipalities

(1) San Francisco, CA; **(2)** Seattle, WA; **(3)** Long Beach, CA; **(4)** SeaTac, WA; **(5)** New York City, NY; **(6)** Los Angeles City, CA; **(7)** Los Angeles County, CA; **(8)** Oakland, CA; **(9)** Philadelphia, PA; **(10)** Tacoma, WA; **(11)** Emeryville, CA; **(12)** Montgomery County, MD; **(13)** Pittsburgh, PA; **(14)** Santa Monica, CA; **(15)** Minneapolis, MN; **(16)** San Diego, CA; **(17)** Chicago, IL; **(18)** Berkeley, CA; **(19)** Saint Paul, MN; **(20)** Cook County, IL; **(21)** Austin, TX; **(22)** Duluth, MN; **(23)** San Antonio, TX; **(24)** Dallas, TX; **(25)** Westchester County, NY; **(26)** Bernalillo County, NM (PTO law); **(27)** Allegheny County, PA; **(28)** West Hollywood, CA (PTO law)

The Spread of Sick/Personal Leave & Anti-Local Leave Laws

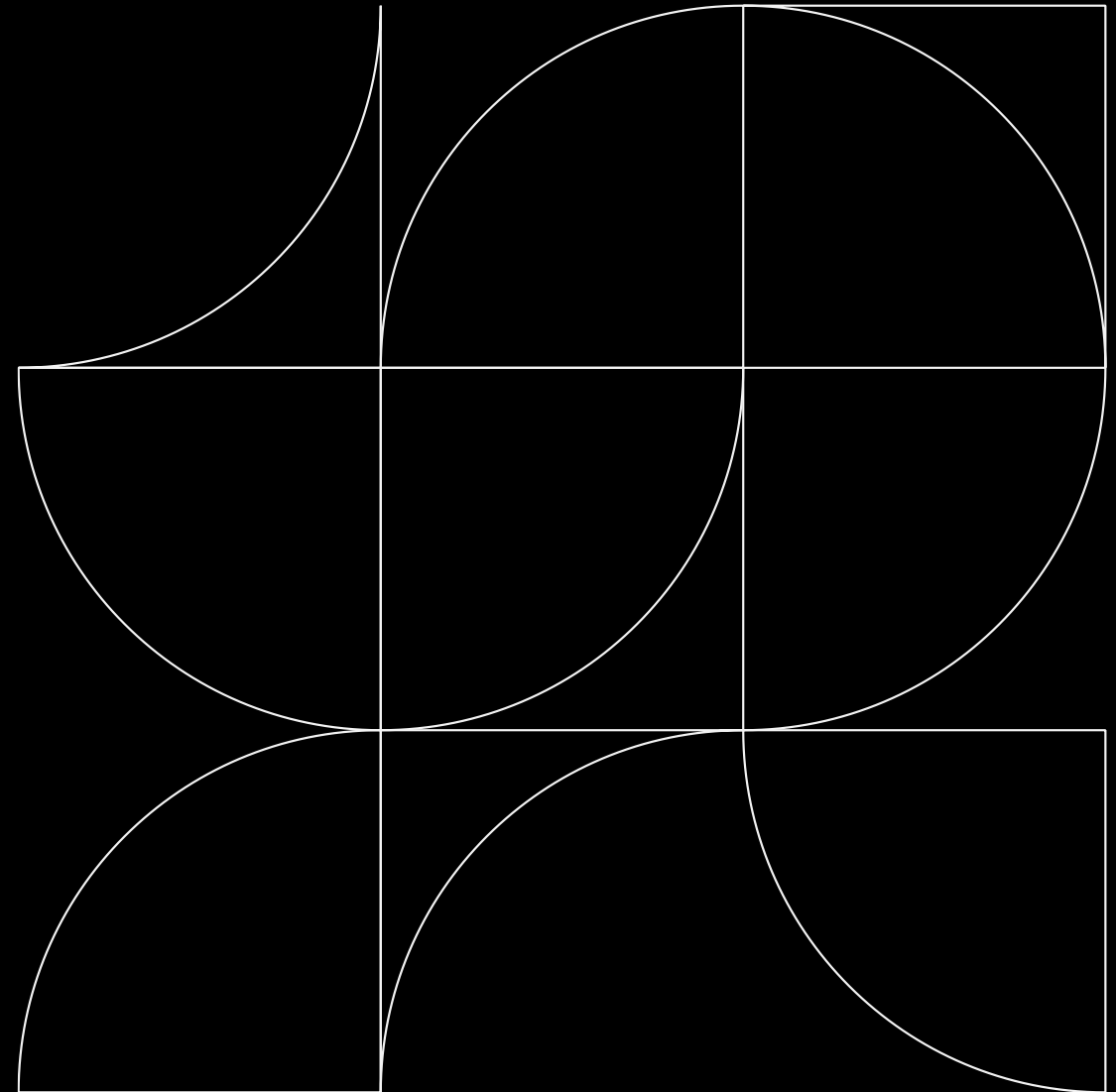


©2021 Seyfarth Shaw LLP

www.seyfarth.com

<https://www.seyfarth.com/news-insights/2020-census-the-whereabouts-of-paid-sick-and-personal-leave-laws-and-state-gatekeepers.html>

New York Paid Leave Law Overview



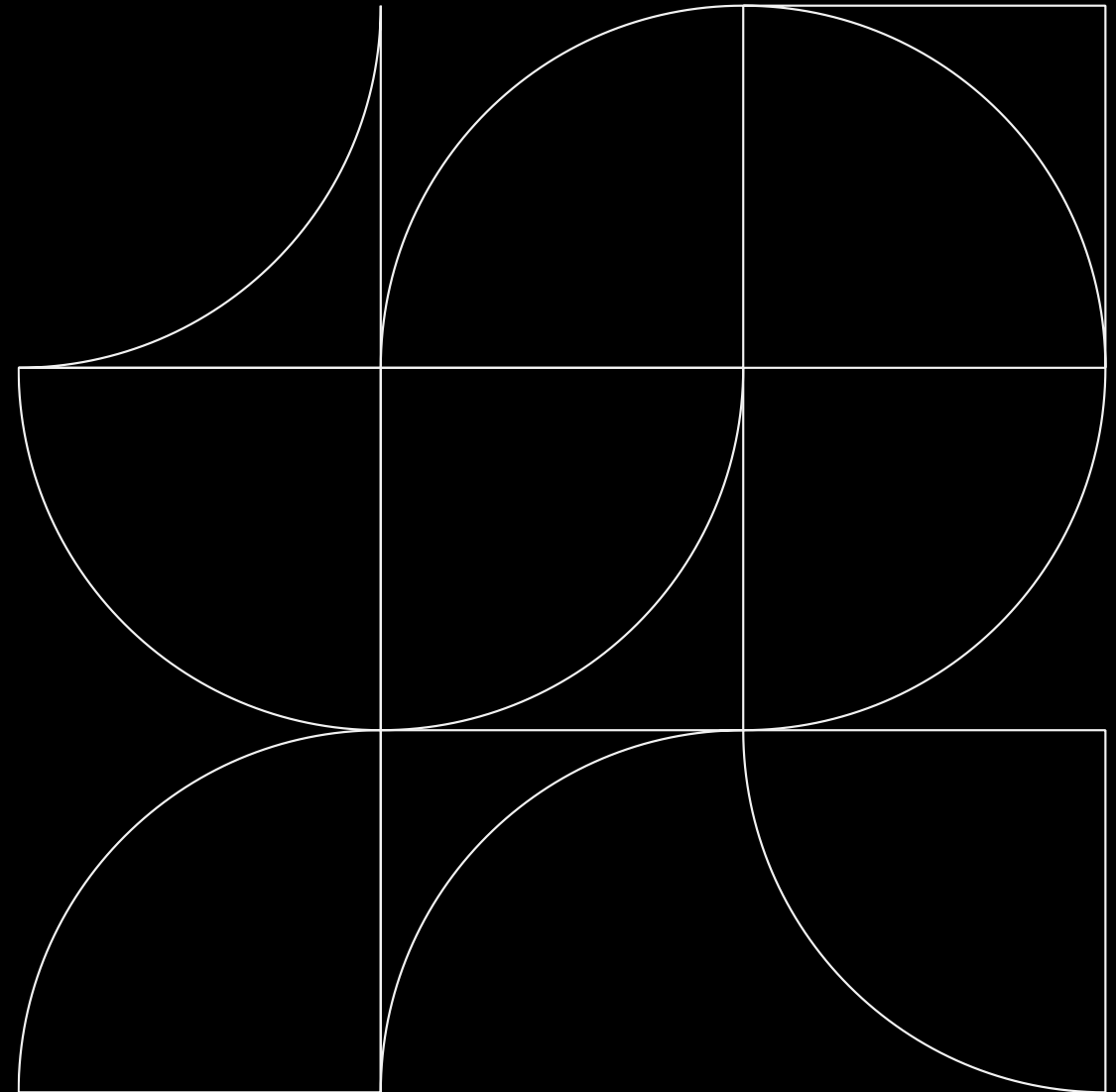
Overview of Select New York State Leave Laws

- **NY Statewide Paid Sick Leave Law (PSL):** Employees accrue and can use up to 40 or 56 hours of paid or unpaid sick leave per year (depending on employer size).
- **NY Statewide COVID-19 Emergency Leave Law:** PSL and/or PFL due to quarantine or isolation due to COVID-19. Amount and type of leave varies based on ER size.
- **NY Statewide COVID-19 Vaccine Leave Law:** As of 3/12/2021, EEs may receive up to 4 hours of paid leave per COVID-19 vaccine injection.
- **NY Paid Family Leave Law (PFL):** As of 1/1/2021, provides up to 12 weeks of paid leave for eligible EEs who take leave for covered reasons, including bonding with new child or to care for family member with a serious health condition.
- **NY Disability Benefits:** Temporary cash benefits paid to an eligible wage earner, when the wage earner is disabled by an off-the-job injury or illness.
- **NY Workers' Compensation Act:** Insurance that provides cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job.
- **NY Unemployment:** Temporary income for eligible workers who lose their jobs through no fault of their own.

Overview of Select New York Local Leave Laws

- **NYC Earned Safe and Sick Time Act:** Employees accrue and can use up to 40 or 56 hours of paid sick leave (depending on employer size).
 - **NYC Child Vaccine Paid Leave:** Amendment to NYC ESSTA in Dec. 2021 with retroactive effect to 11/2/2021. Provides up to 4 hours of paid leave per COVID-19 vaccine injection per child.
- **NYC Temporary Schedule Change Law:** EEs are entitled to temporary changes to their work schedule for certain “personal events.”
- **Westchester County Safe Time Leave Law:** EEs are entitled to up to 40 hours of paid leave for certain safe time absences.
 - **Westchester County Sick Time Act:** Not in effect – preempted by NYS PSL law.

New York State Paid Sick Leave Law: Overview and Final Regulations



New York State Paid Sick Leave Law – Overview

- **Effective Date:** 9/30/2020
- **Employee Eligibility:** No express standard. NYLL Sec. 190 broadly defines “employee” as any person employed for hire by an employer in any employment.
- **Accrual Rate:** 1 hour of sick leave for every 30 hours worked.
- **Start of Accrual:** Start of employment.
- **Accrual Cap:** 40 or 56 hours of **paid or unpaid** sick leave, depending on employer size.
- **Usage Cap:**
 - ER with Fewer than 100 EEs: Up to 40 hours of sick leave per year (paid or unpaid varies based on ER size).
 - ER with 100+ EEs: Up to 56 hours of paid sick leave per year.
- **Usage Waiting Period for New Hires:** No waiting period.
- **Year-End Carryover:** No carryover cap.
- **Frontloading:** Permitted.

New York State Paid Sick Leave Law – Overview

- **Reasons for Use:**
 - **EE / Family Member is Sick**: For a mental or physical illness, injury, or health condition of EE or such EE's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time EE requests such leave;
 - **Diagnosis, Treatment, Preventive Care**: For the diagnosis, care, or treatment of a mental or physical illness, injury, or health condition of, or need for medical diagnosis of, or preventive care for the EE or EE's family member; or
 - **Safe Time**: For certain absences from work due to the EE or EE's family member being the victim of domestic violence, a family offense, a sexual offense, stalking, or human trafficking.

New York State Paid Sick Leave Law – Overview

- **Written Policy Requirements:** No provision in NYS PSL law.
 - **NYLL** section 195.5 says: “Every employer **shall**...notify his employees in writing or by publicly posting the employer's policy on **sick leave**, vacation, personal leave, holidays and hours.”
 - **NYS Website:** Any limitations permitted by the law **must** be put into writing and either posted or given to employees.
 - Employers **must** notify employees in writing or by posting a notice in the worksite, prior to the leave being earned, of any restrictions in their leave policy affecting the employees’ use of leave, including any limitations on leave increments.

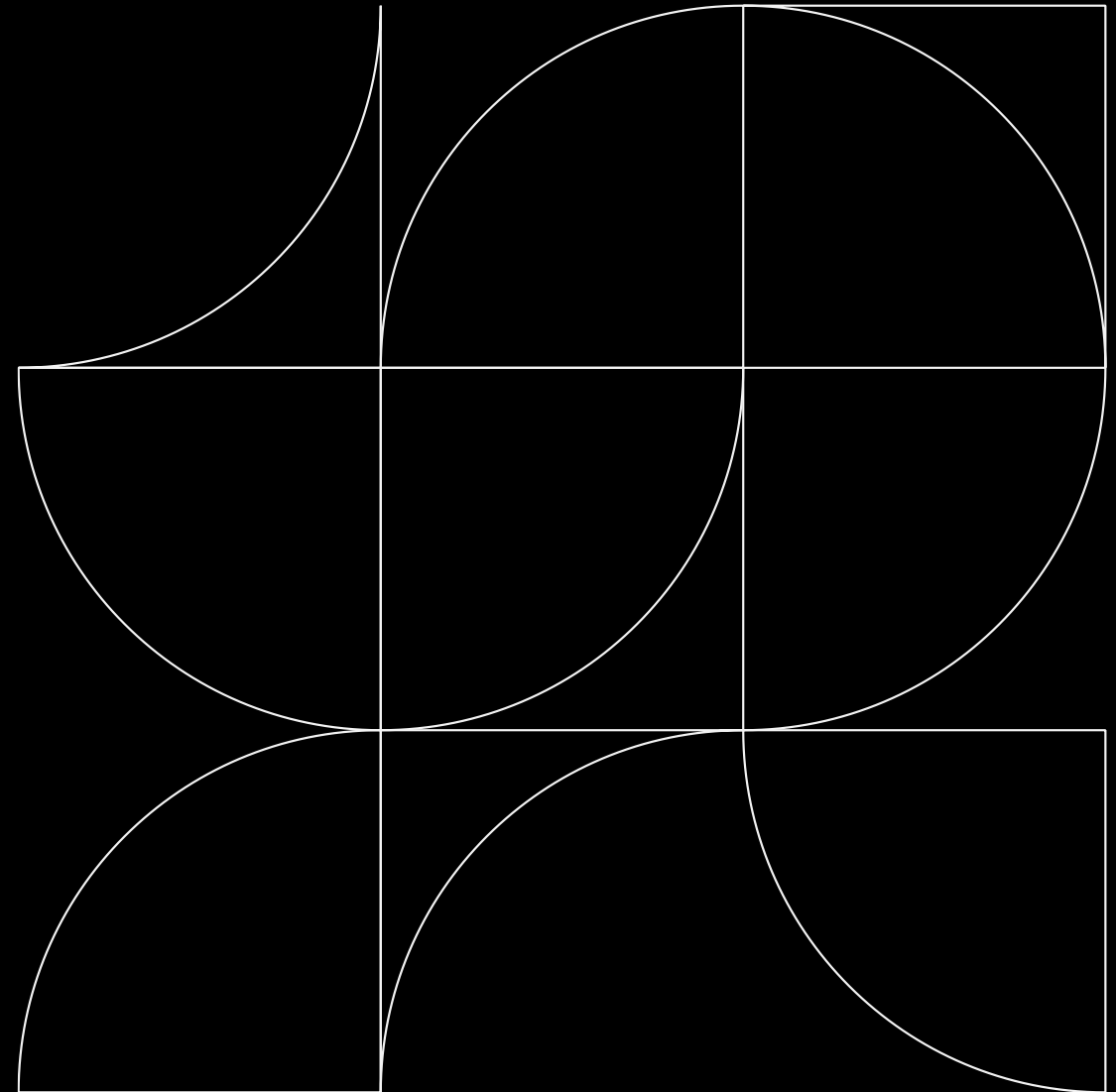
NYS PSL Final Regulations

- **Accrual:** May round to the nearest five minutes or one-tenth or one-quarter of an hour, so long as employee will still be provided with all leave for the time worked.
- **Employer Size:** The highest total number of employees concurrently employed at any point during the calendar year to date.
 - Per DOL Comments, ERs should count all employees **nationwide**.
- **Documentation:**
 - An employer may request documentation confirming eligibility to take leave where employee uses leave for **three or more consecutive and previously scheduled workdays** or shifts.
 - An employer **cannot** require an employee to disclose confidential information, or pay associated costs or fees.
 - **Limited** scope of what is considered appropriate documentation.

NYS PSL DOL Comments

- **Carryover:** No “use it or lose it” option and no cap, even when an employer frontloads sick time.
- **Cash Out at Year End:** Employers may either:
 - **(A)** Give employees the option to (1) voluntarily elect to use and receive payment for PSL prior to the end of a calendar year or (2) carry over unused sick leave; or
 - **(B)** Only allow employees to carry over unused sick leave.
- **Notice to Employer:** No distinction between foreseeable and unforeseeable leave.
- **Notice and Posting:** No requirement.
- **Enforcement:** Failure to provide employees with sick leave is tantamount to a failure to pay employee wages.

New York State COVID-19 Emergency Leave Law



NYS COVID-19 Emergency Leave Law



- **10 or less employees and net income of \$1 million or less as of 1/1/2020:** Employees are entitled to unpaid sick leave for the entire period of quarantine or isolation, **and** employees will be eligible for paid family leave and disability benefits.
- **11-99 employees OR 10 or less employees and net income greater than \$1 million as of 1/1/2020:** Employees are entitled to 5 (calendar) days of paid sick leave, **and** unpaid leave for remainder of the quarantine or isolation. After exhausting the 5 days of paid sick leave, employees are eligible for paid family leave and disability benefits.
- **100 or more employees as of 1/1/2020:** At least 14 (calendar) days of paid sick leave. While unclear under the law, appears that paid family benefits are available to care for child subject to covered order.

NYS COVID-19 Emergency Leave Law



- **Qualifying Reasons for Use:**
 - **Emergency PSL: Employee** must be subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.
 - **Expansion of paid family leave:** Employee can use paid family leave to **provide care for a minor dependent child** of the employee who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

NYS COVID-19 Emergency Leave Law

January 2021 DOL
Guidance

- COVID-19 paid sick leave under the Law is available to employees who are subject to **multiple** mandatory or precautionary orders of quarantine or isolation, **but** with limits:
- **(a)** Up to a certain cap, **and**
 - Paid sick leave is only available to an employee for a **maximum of three orders of quarantine or isolation**, and again, only in select circumstances.
- **(b)** In certain situations.
 - Employee **must** test positive for COVID-19 in order to use COVID-19 leave the second and third mandatory or precautionary order of quarantine or isolation.

NYS COVID-19 Emergency Leave Law

January 2021 DOL
Guidance

- **Pay Continuation Required:** **(a)** If an employer sends an employee home from work due to COVID-19 exposure or potential exposure, regardless of whether the exposure or potential exposure occurred in the workplace, and **(b)** the employee is not subject to a covered order of quarantine or isolation, then **(c)** the employer **must pay the employee at their regular rate of pay.**
- **Payment May Stop:** The payment must continue until either **(a)** the employer allows the employee to return to work, or **(b)** the employee becomes subject to a mandatory or precautionary order of quarantine or isolation.

Circumstances When Isolation Is Proper

- Someone who contracts COVID-19 (irrespective of vaccination status) should isolate for 5 days.
- At the end of the 5-day isolation period:
 - Individuals who are asymptomatic, or whose symptoms are resolving, can exit isolation and should wear a well-fitting mask while around others for an additional 5 days.
 - Individuals who are moderately or severely immunocompromised should continue to follow the 10-day isolation period.
 - Individuals who are unable to wear a well-fitting mask for 5 days after the 5-day isolation should also continue in isolation for an additional 5 days.



Circumstances Where Quarantine is Proper

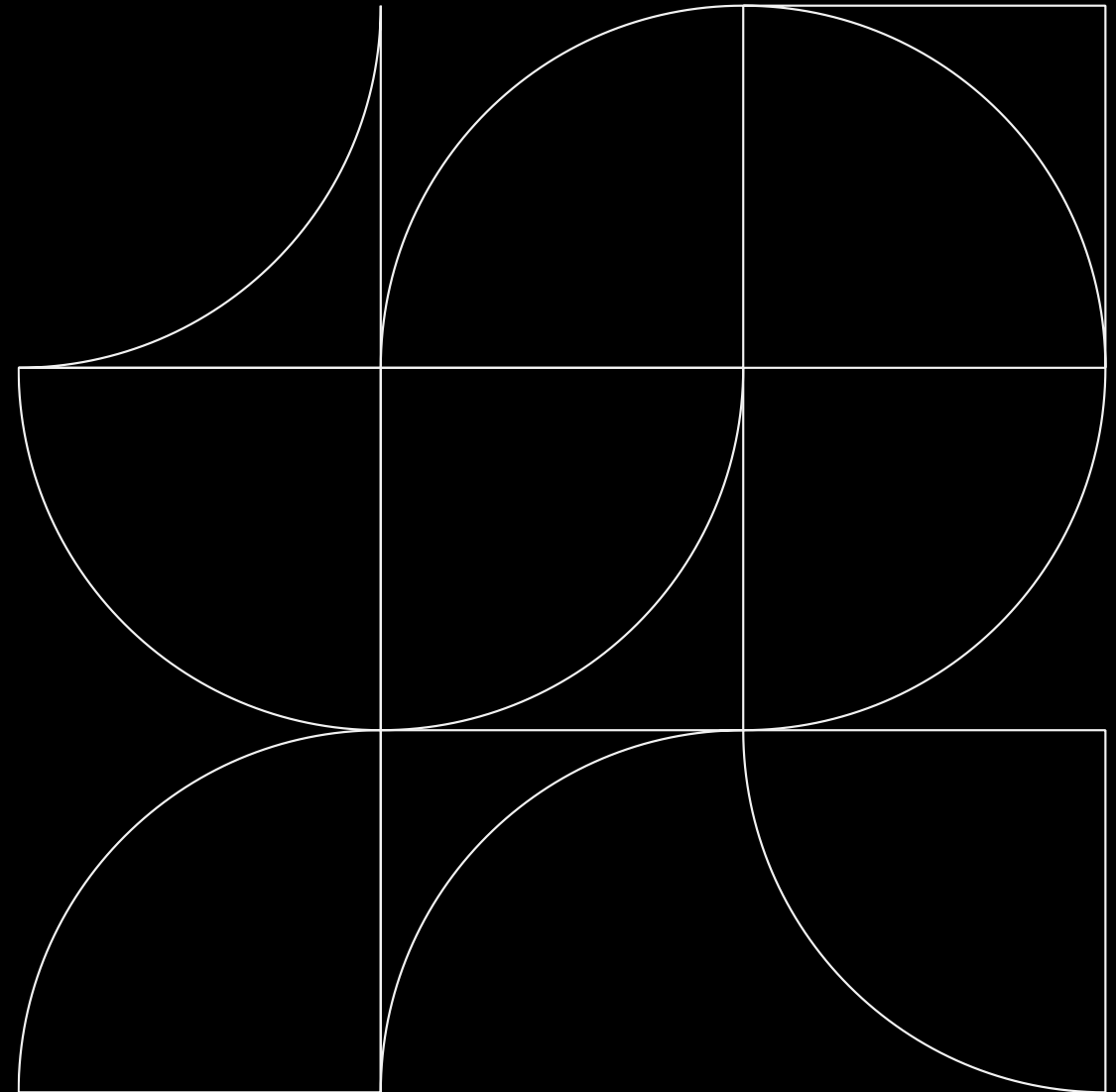
- Depends on vaccination status:
 - Individuals who are not fully vaccinated or not yet boosted (if eligible for booster), are required to quarantine for 5 days after exposure and wear a well-fitting mask while around others for an additional 5 days.
 - Individuals who are fully vaccinated and boosted (or not yet eligible for booster), if they are asymptomatic, do not need to quarantine but should wear a well-fitting mask around others for 10 days after exposure to COVID-19.
- If symptoms appear, the individual should “quarantine and seek testing.”
- *“Regardless of vaccination status, all individuals with exposure to a confirmed case should, if possible, be tested for COVID-19 on the 5th day after exposure with either a nucleic acid amplification test (NAAT, e.g. PCR) or antigen test.”*

NYS COVID-19 Emergency Leave Law

Documentation and Amount of Leave Revisited

- **Documentation:** Depending on reason for use of COVID-19 emergency leave, the following may be considered reasonable documentation (i.e., may constitute sufficient proof of an “order”):
 - An order of mandatory or precautionary order of quarantine or isolation by an appropriate government entity;
 - Documentation from an appropriate health care provider (per FAQs);
 - Documentation from a licensed medical provider or testing facility attesting that the employee has tested positive for COVID-19; or
 - Self-Affirmation form completed by the employee.
- **Amount of NY COVID Emergency PSL:** Determining amount of COVID Emergency PSL that ERs must provide to EEs subject to an “order” is unclear, at least in practice, based on recent NYS Dep’t of Health guidance.

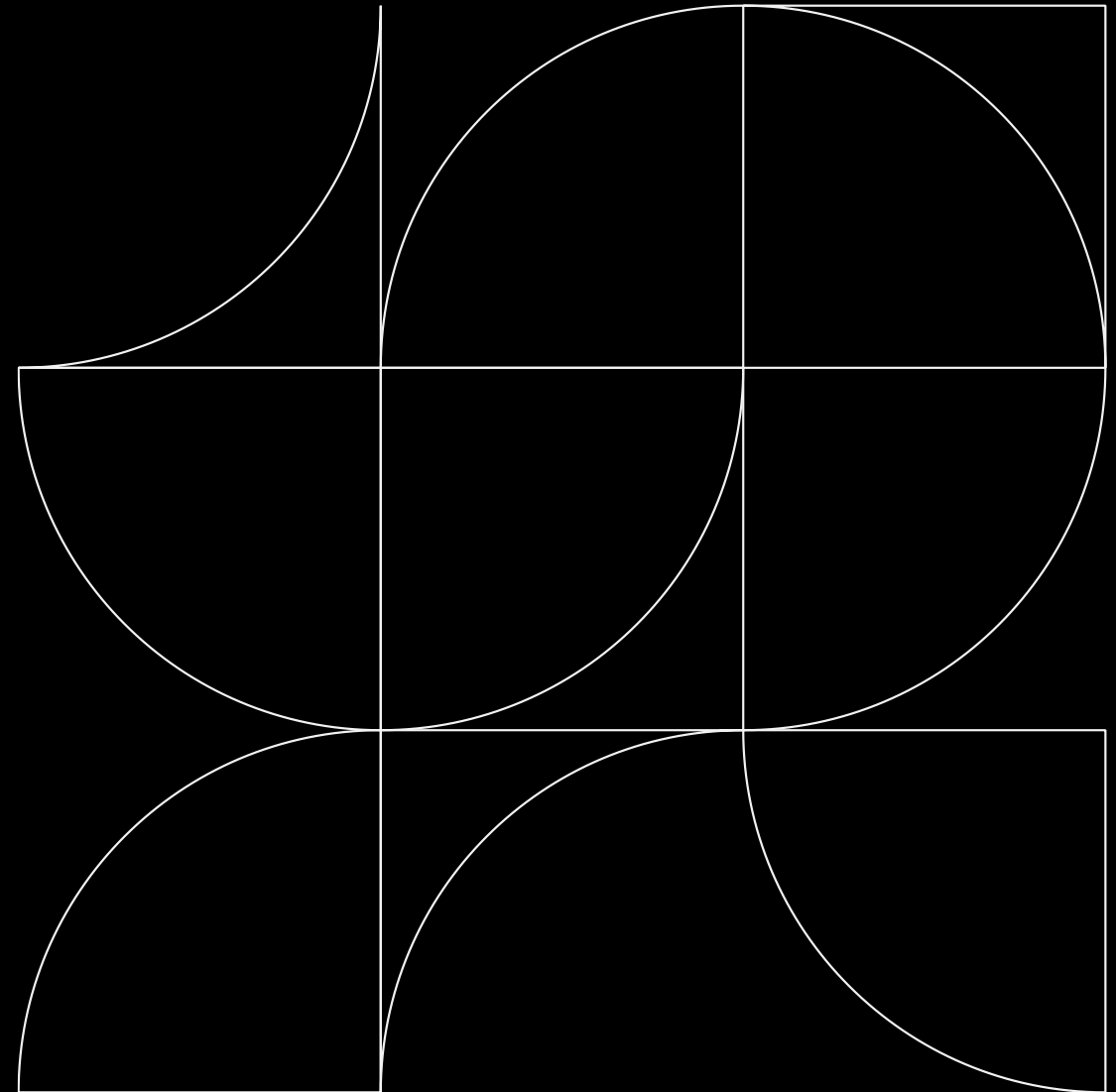
New York State COVID-19 Vaccine Leave Law



New York State COVID-19 Vaccine Paid Leave Law

- **Effective Date:** March 12, 2021
- **Sunset Date:** December 31, 2022
- **Amount of Leave:** A sufficient period of time, not to exceed 4 hours per vaccine injection.
- **Reasons for Leave:** Leave is available to employees for absences needed from work in order for the employee to receive their own COVID-19 vaccine injection.
- **Rate of Pay:** Generally, leave must be paid at the employee's regular rate of pay.
- **Notice:** FAQs provide that the law does not prevent an employer from requiring notice.
- **Documentation:** FAQs provide that the law does not prevent an employer from requiring proof of vaccination. However, employers are encouraged to consider any confidentiality requirements applicable to such records prior to requesting proof of vaccination.

NYC Earned Safe and Sick Time Act



NYC Earned Safe and Sick Time Act

- **Effective Date:** 4/1/2014, amended 5/5/2018, amended 9/30/2020, amended 12/23/2021
- **Employee Eligibility Requirements:** No express standard. Follows NYLL Sec. 190.
- **Accrual Rate:** 1 hour of sick leave for every 30 hours worked.
- **Accrual Cap:** 40 or 56 hours of paid sick leave, depending on employer size.
- **Usage Cap:**
 - ER with Fewer than 100 EEs: Up to 40 hours of sick leave per year.
 - ER with 100+ EEs: Up to 56 hours of paid sick leave per year.
- **Usage Waiting Period for New Hires:** No waiting period.
- **Year-End Carryover:** Law provides that employees can carry over up to 40 or 56 hours, depending on employer size. However, we must follow the state law, which is more generous.
- **Frontloading:** Most likely permitted.

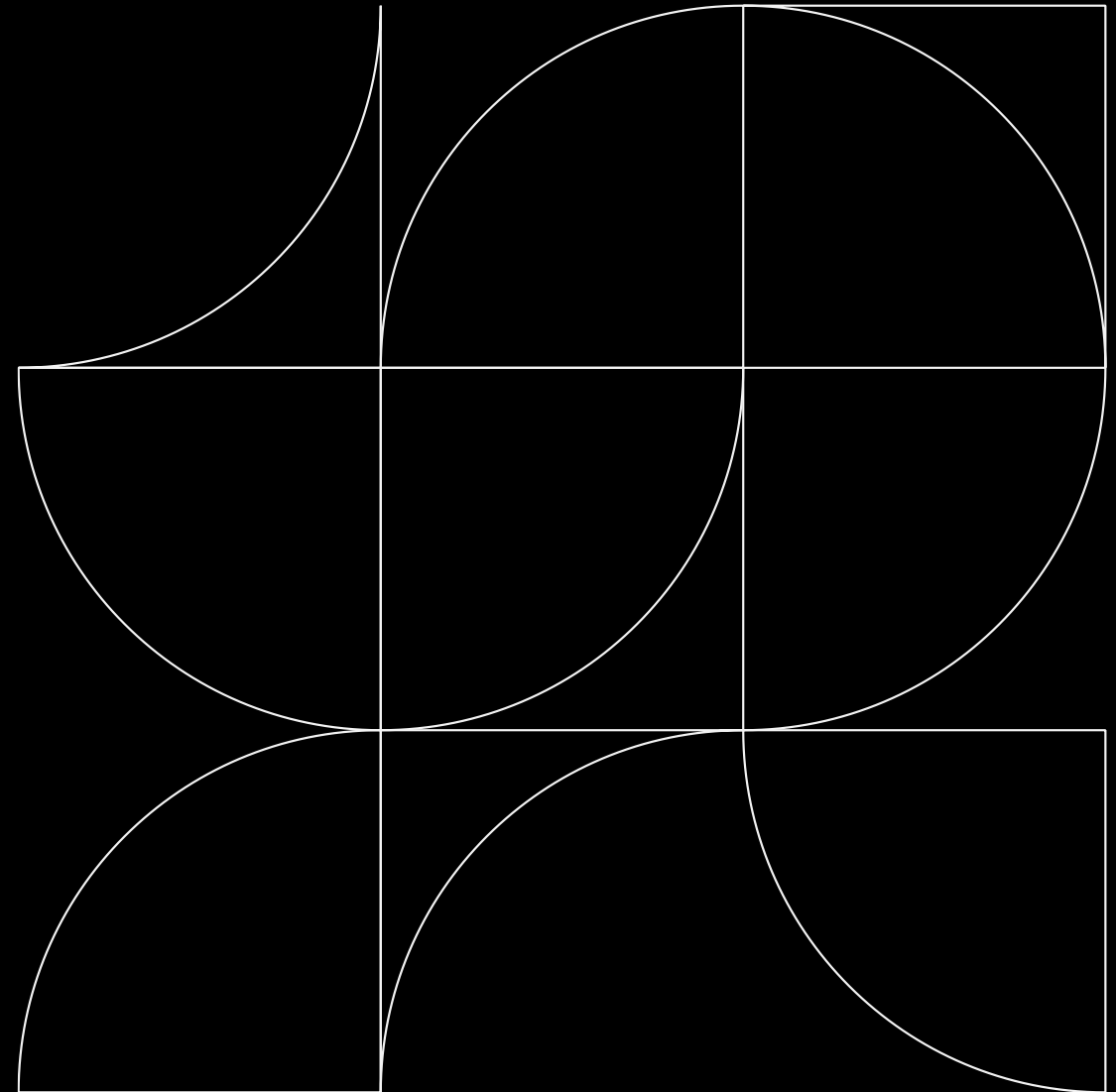
NYC ESSTA: Reasons for Use

- **EE Sick**: Employee illness, injury, health condition, medical diagnosis, care or treatment or need for preventive medical care.
- **Care for Family Member**: Care of family member who needs medical diagnosis, care or treatment or illness, injury or health condition or need for preventive medical care.
- **Safe Time**: Certain absence from work due the employee or employee's family member being the victim of domestic violence, a family offense matter, sexual offense, stalking, or human trafficking.
- ***Closure of place of business or child's school or childcare provider due to public health emergency.***
- **COVID-19 Child Vaccine Leave**
- **COVID-19 Usage (per non-binding guidance)** includes taking leave when the **(a)** employee feels ill or shows symptoms of COVID-19, **(b)** employee gets tested for the flu or COVID-19, **(c)** employee is under quarantine—which may also be covered by state or federal law—or self-isolating for preventative purposes, or **(d)** employee is caring for a family member under a mandatory or precautionary order of quarantine.

NYC Earned Safe and Sick Time Act

Legal Requirements	New York City Paid Sick Leave
<p>Written Policy Requirements</p>	<p>Written policy must explain, at a minimum:</p> <ul style="list-style-type: none"> • Method for calculating sick time (includes treatment of new hires, accrual vs. frontload, etc.) • Policies regarding use of sick time • Notice requirements of a need to use sick time • Written documentation requirement and any consequences to EE of noncompliance • Minimum increment or fixed period for use • EE discipline for misuse of sick time policy • Carryover policy • A description of the confidentiality requirements • Certain statement re: covered reasons for policies using a term other than "safe/sick time" or "safe and sick time" (e.g. PTO policies) <p>Written policy MUST meet or exceed all requirements and restrictions under ESSTA</p> <p>Must be maintained in a single writing PLUS distribution method AND timing requirement</p>

Enforcement of NYC Earned Safe and Sick Time Act



NYC Earned Safe and Sick Time Act Enforcement

	2017	2018	2019	2020
Complaints Received	381	322	318	228
Investigations Opened	392	285	284	196
Investigations Closed	319	386	255	194
Cases Filed	48	31	29	12
Restitution	\$2,067,339	\$1,888,114	\$2,427,430	\$793,924
Workers Receiving Restitution	6,147	7,481	7,208	1,121
Penalties	\$497,447	\$447,019	\$454,009	\$171,274

Table A3, Worker Protection Enforcement Volumes, 2017-2020; Table A4. Worker Protection Restitution and Penalties, 2017-2020
<https://www1.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRightsReport-2021.pdf>

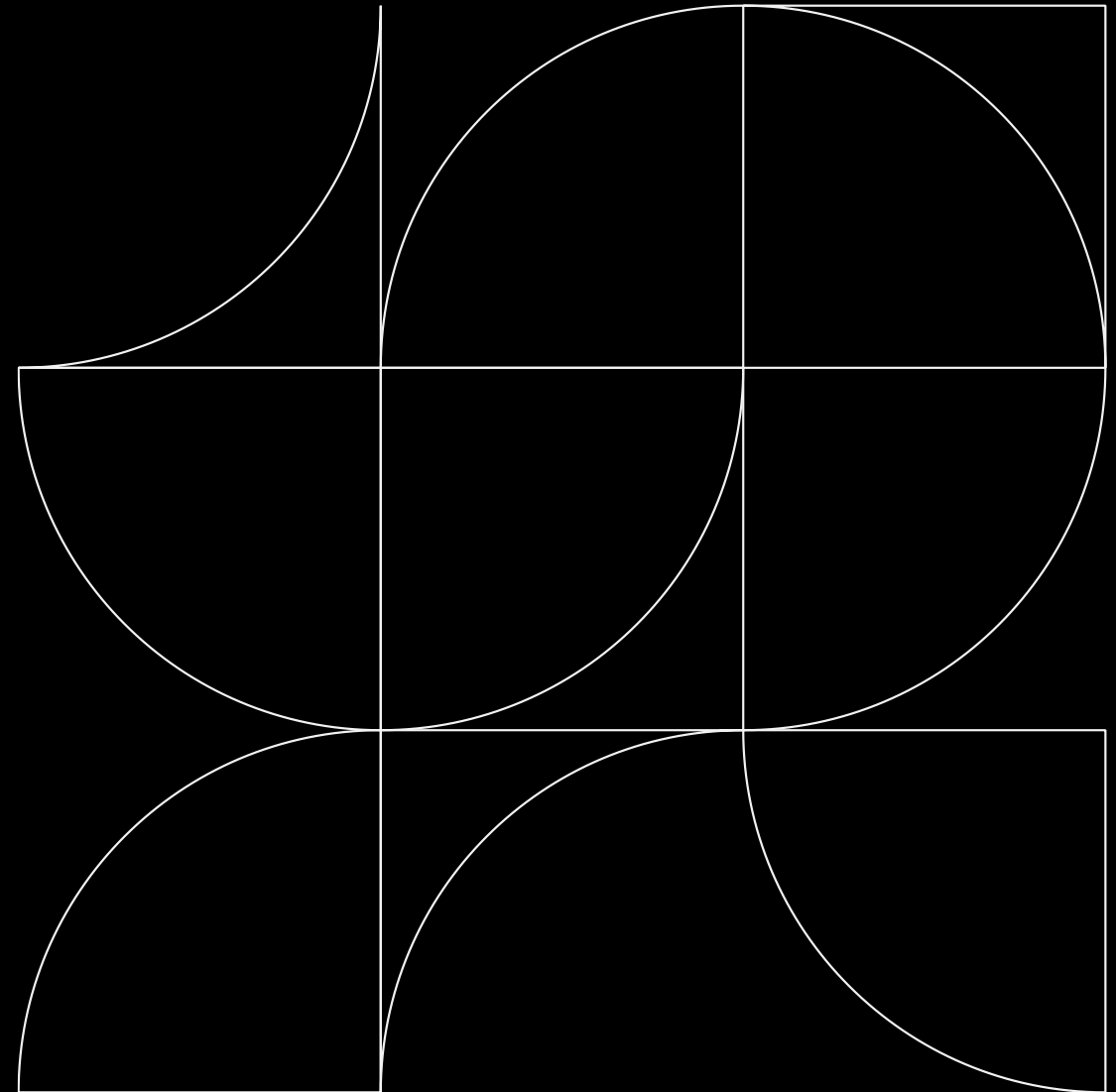
NYC Earned Safe and Sick Time Act Enforcement (con't)

Complaints Received	2017	2018	2019	2020
Did not pay for use	191	178	192	132
Did not provide notice	183	151	143	76
Failed to maintain adequate policy	194	73	154	135
Retaliated (includes threats)	114	106	139	59
Did not allow use	106	115	88	40
Required documentation	26	33	45	20
Did not provide correct accrual	20	18	19	11
Restricted use	5	36	93	49
Did not provide correct carry over	15	49	24	6
Required employee to find replacement	14	8	10	3
Interfered with use	0	21	44	41

Table 7. Paid Safe and Sick Leave Complaints Received, by Allegation, 2017-2020

(<https://www1.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2021.pdf>)

NYC Child Vaccine Leave Mandate



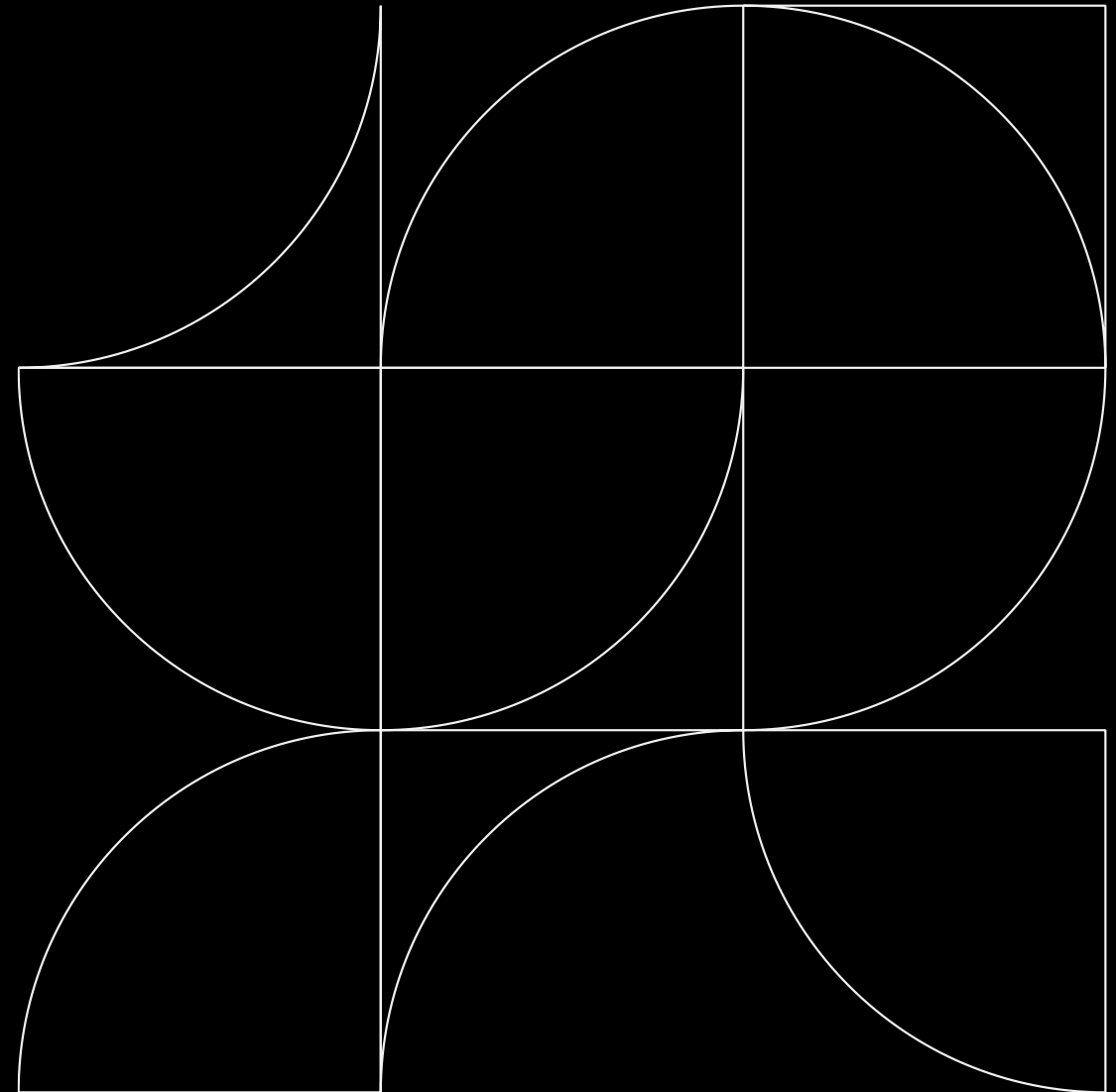
NYC Child Vaccine Leave Mandate

- **Effective Date:** December 23, 2021 (retroactive effect to November 2, 2021)
- **Sunset Date:** December 31, 2022
- **Amount of Leave:** Four hours of COVID-19 child vaccination time per vaccine injection, for each child. This is in addition to leave provided under the NYC ESSTA.
- **Reasons for Leave:** (1) To accompany a child to receive a COVID-19 vaccine injection; or (2) to care for a child who is experiencing temporary side effects from a COVID-19 vaccine injection.
- **Rate of Pay:** Generally, leave must be paid at the employee's regular rate of pay.

NYC Child Vaccine Leave Mandate

- **Notice:** Unchanged standard of the New York City Earned Safe and Sick Time Act.
- **Documentation:** Employer may require reasonable documentation within seven days of an employee's use of COVID-19 child vaccination time.
- **Written Policy Requirement:** Most likely, yes.
- **Available Balance Notification:** Unclear, but unlikely.
- **Notice/Posting:** None at this time; awaiting possible updates.

Seyfarth Paid Leave Resources



Seyfarth Paid Leave Resources



If you have questions about or would like assistance with the country's **Paid Sick Leave "Patchwork"** here are some ways Seyfarth can help:

(A) PSL Survey: Seyfarth maintains a ***comprehensive PSL survey*** breaking down the specific requirements of ***each*** existing state and local PSL law.

For more information contact: [**paidleave@seyfarth.com**](mailto:paidleave@seyfarth.com)

(B) Paid Leave Mailing List: Seyfarth regularly publishes Legal Updates and Blog Posts on PSL and other paid leave law developments.

You can sign up here:

[**https://connect.seyfarth.com/9/7/landing-pages/subscription.asp**](https://connect.seyfarth.com/9/7/landing-pages/subscription.asp)

Seyfarth Paid Leave Resources



(C) Webinar Series - Guidance on PSL: This webinar series is a great tool for you!

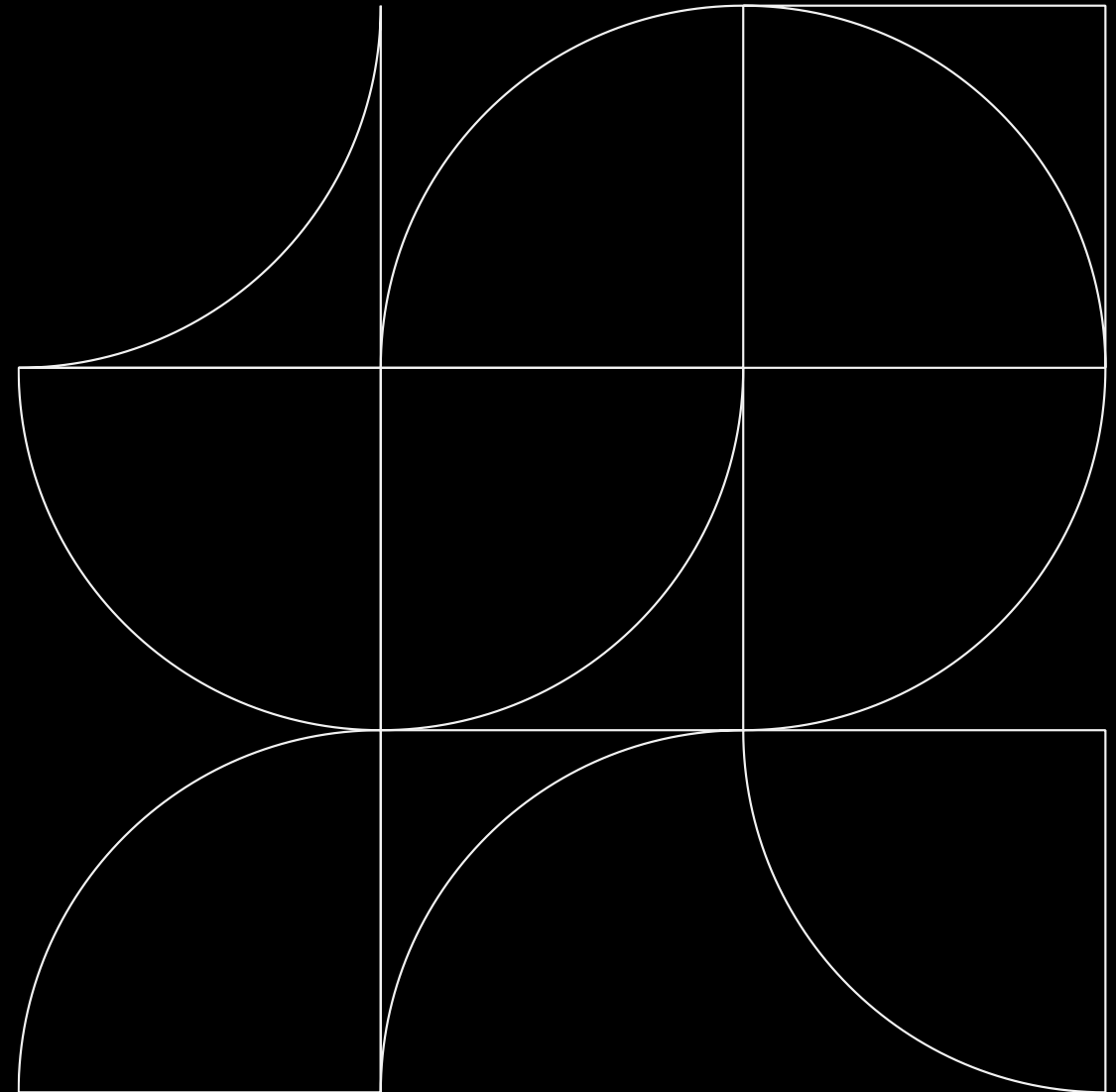
- Part 1 – NY State and Local PSL at the end of 2020
- Part 2 – CO, ME and NY PSL updates
- Part 3 – COVID-19 Supplemental PSL mandates
- Part 4 – Prospects for Federal Paid Leave
- Part 5 – Practical tips on navigating the PSL “patchwork”
- Part 6 – TODAY!

Note: We also have a separate Webinar Series focused on Paid Family Leave guidance.

(D) “Take It or Leave It” Podcast: In late 2021, Seyfarth launched a new podcast focused exclusively on workplace leaves, absence management, and accommodations. Episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth’s website.

More info at: <https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>

QUESTIONS?



THANK YOU!

