

# Home Care Developments

**Poricanin**  
Practical Counsel. Industry Insight.

## NY DOL Publishes FAQs on Paid Sick Leave

The Department of Labor has published the long-awaited FAQs on the New York State Paid Sick Leave Law (the "Law"), approximately 19 days after the Law went into effect. The FAQ document is available [HERE](#).

Most of the answers provided in the FAQ document should not be a surprise to any employer, however, here are several questions/answers that should be particularly relevant to home care providers (including fiscal intermediaries):

**CAN AN EMPLOYER REQUIRE AN EMPLOYEE TO TELECOMMUTE OR WORK FROM HOME INSTEAD OF TAKING SICK LEAVE?** No.

**DO EMPLOYEES ACCRUE LEAVE FOR PAY RECEIVED FOR NON-WORKING TIME?** No.

**IS THERE A MINIMUM PERIOD OF EMPLOYMENT BEFORE AN EMPLOYEE CAN USE THEIR ACCRUED SICK LEAVE?** There is no minimum period of employment before an employee can use sick leave. However, unless an employer provides the required amount of sick leave up-front at the beginning of a calendar year or otherwise has a sick leave policy that exceeds the requirements of the law, an employee would have to work at least 30 hours before accruing any sick leave.

**IF A BUSINESS IS JOINTLY OWNED BY TWO INDIVIDUALS AND THE BUSINESS FAILS TO PROVIDE SICK LEAVE AS REQUIRED UNDER THE LAW, WHICH OWNER IS RESPONSIBLE?** Both owners would be jointly and severally responsible for the failure to comply with the law. The term "employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service.

**DOES AN EMPLOYER HAVE TO PROVIDE SICK LEAVE TO EMPLOYEES WHO TELECOMMUTE OUTSIDE OF NEW YORK STATE?** Employees who telecommute are covered by the law only for the hours when they are physically working in New York State, even if the employer is physically located outside New York State.

**ARE DOMESTIC WORKERS COVERED BY THE LAW?** Domestic workers are eligible for leave protections under the law depending on the size of their employer, in addition to leave under the State Domestic Worker Bill of Rights.

**CAN AN EMPLOYEE USE SICK LEAVE FOR ONLY HALF OF A WORKDAY?** The maximum increment an employer may set for the use of sick leave under this 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 sick leave usage, such as one or two hours).

**IF AN EMPLOYEE USES LEAVE DURING HOURS THAT WOULD HAVE BEEN OVERTIME IF WORKED, DOES THE EMPLOYER HAVE TO PAY THE OVERTIME RATE OF PAY?** No. Employees are required to be paid their normal pay for leave time under the law.

**WHAT IF AN EMPLOYEE IS PAID AT DIFFERENT RATES FOR DIFFERENT TASKS?**

Employees who are paid at more than one rate of pay must be paid for leave under the law at the weighted average of those rates. The weighted average is the total regular pay divided by the total hours worked in the week. Overtime exempt employees who are paid on an hourly basis are assumed to work 40 hours per workweek, when deriving their regular rate unless the terms and conditions of the employment specify or require otherwise. However, as noted above, employers are prohibited from reducing an employee's rate of pay for leave time hours only.

**I LIVE IN WESTCHESTER COUNTY, WHICH PROVIDES DOMESTIC WORKERS UP TO 40 HOURS OF LEAVE PER YEAR REGARDLESS OF EMPLOYER SIZE. IS THAT STILL THE LAW?** Westchester County law currently provides that domestic workers accrue sick leave at the rate of one hour for every 7 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.

**MAY PAID FAMILY LEAVE BE USED CONSECUTIVELY WITH PAID SICK LEAVE (E.G. THREE DAYS OF PAID SICK LEAVE, TWO DAYS OF PAID FAMILY LEAVE)?** An employee can only choose to use sick leave during Paid Family Leave (PFL) if the employer allows it. Taking sick leave at the same time as PFL may allow the employee to receive their full salary for all or part of the leave. However, an employee cannot receive more than their full wages while receiving PFL benefits.

**DOES LEAVE REQUIRED UNDER NEW YORK LABOR LAW SECTION 196-B EXPIRE AT THE END OF A CALENDAR YEAR?** Sick leave that is unused by an employee over the course of the year must be carried over to the next calendar year.

**HOW MUCH NOTICE DOES AN EMPLOYEE HAVE TO GIVE TO THE EMPLOYER PRIOR TO USING THEIR ACCRUED SICK LEAVE?** There is no specified notice or time period requirement under the law, provided, however, that there is an oral or written request to the employer prior to using the accrued sick leave, unless otherwise permitted by the employer.

Please let us know if you have any questions about your Company's compliance with the New York State Paid Sick Leave Law, or the myriad of paid sick leave laws and how they relate to one another for your different classes of employees.

## Upcoming Presentation Notice

---

General Session

**Wage and Hour Update with the Department of Labor**

Frank King, Chief Labor Standards Investigator with NYS Department of Labor; Eriña Porjcapin, Poricanin Law; Peter Godfrey and John Godwin, Hodgson Russ

This session will help providers understand the longstanding and new requirements concerning their federal and state wage and hour obligations. Topics covered will include updates to minimum salary requirements for exempt employees, spread of hours calculations, new wage parity record keeping requirements, wage and hour trends and common problem areas in federal and state DOL and Attorney General audits and litigations, and how to best prepare to respond to any audits and litigation claims alleging violations of wage and hour laws.

Join my wage and hour colleagues and I, alongside the New York Department of Labor, for a Wage and Hour Update session at this year's annual New York Health Care Providers' Association conference. We will discuss all the legal updates and changes concerning pay rate forms, minimum wage increase, Department of Labor initiatives and enforcement activity in home care, as well as wage parity matters.

---



From the Desk of

*Emina Poricanin*  
Emina Poricanin, Esq.

---

**New York City Offices**

3 Columbus Circle, 15th Floor  
New York City, NY 10019

434 W. 33rd Street, 10th Floor  
New York City, NY 10001

---

**Buffalo Office**

50 Fountain Plaza, Suite 1400  
Buffalo, NY 14202

---

**Albany Office**

90 State Street, Suite 700  
Albany, NY 12207

**Poricanin**

Practical Counsel. Industry Insight.

---

**STAY IN TOUCH**

[emina@poricaninlaw.com](mailto:emina@poricaninlaw.com)

315.269.1125

518.676.0192



Copyright © 2020 Poricanin Law, P.C., all rights reserved

You are receiving this communication because you have elected to participate in Poricanin Law's Industry Insights newsletter. Nothing stated herein should be construed as legal advice, or as creating an attorney-client relationship. If you would like to opt-out of receiving these communications, please email [e@poricanin.com](mailto:e@poricanin.com).