

George Latimer
County Executive

Human Rights Commission
Tejash V. Sanchala, Esq.
Executive Director

Westchester's Earned Sick Leave Law: What Employees Need to Know

1. What is the Earned Sick Leave Law?

Under Westchester County's Earned Sick Leave Law, covered employees have the right to use sick leave for the care and treatment of themselves or a family member. The Westchester County Human Rights Commission (HRC) has prepared this sheet to provide general guidance to covered employees about their rights under the new law.

2. When does the Earned Sick Leave Law go into effect?

The Earned Sick Leave Law goes into effect on April 10, 2019.

3. Who is covered by the Earned Sick Leave Law?

In general, the Earned Sick Leave Law covers employees who work in Westchester County for more than 80 hours in a calendar year for a covered employer, full-time or part-time. Some exceptions apply. Employees not covered by the Earned Sick Leave Law include participants in a work experience program established by a social services district; participants in a work study program under 42 U.S.C. § 2753; employees compensated by or through qualified scholarships under 26 U.S.C. § 117; and employees of government agencies. However, Westchester County government must comply with the Earned Sick Leave Law with respect to its hourly employees that are not subject to a collective bargaining agreement and that meet the eligibility requirements in the law. Westchester County government employees who are covered by a collective bargaining agreement are not "covered employees" for the purposes of the Earned Sick Leave Law.

4. Which employers have to comply with the Earned Sick Leave Law?

Employers that must comply with the Earned Sick Leave Law include any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service. Government agencies are exempt from the Earned Sick Leave Law, except that Westchester County government must comply with respect to its employees that are not subject to a collective bargaining agreement.

5. *When does a covered employee begin to accrue sick leave?*

Covered employees will begin to accrue sick leave on July 10, 2019, or on the date of first employment, whichever is later.

6. *How much sick leave should covered employees get?*

Covered employees accrue sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of sick leave per year.

7. *Do covered employees get paid for sick leave?*

If a covered employer has 5 or more employees, it must give covered employees paid sick leave. If a covered employer has 1 – 4 employees, sick leave may be unpaid.

8. *Does a covered employer have to give a covered employee notice of his or her rights under the Earned Sick Leave Law?*

Covered employers must give covered employees written notice of his or her right to sick leave. Sample notices in English and Spanish are provided on the HRC website.

Employee	Date Written Notice Due to Employee
<i>Employed on or before July 10, 2019</i>	July 10, 2019
<i>First employed after July 10, 2019</i>	Date of first employment

9. *For what instances can a covered employee use earned sick leave?*

A covered employee can use sick leave when:

- The covered employee has a mental or physical illness, injury, or health condition; the covered employee needs to get a medical diagnosis, care, or treatment of their mental or physical illness, injury or condition; the covered employee needs preventative medical care.
- The covered employee 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 preventative medical care.
- The covered employer’s business closes due to a public health emergency or the covered employee needs to care for a child whose school or childcare provider closed due to a public health emergency.

A “family member” is the covered employee’s child, spouse, domestic partner, parent, sibling, grandchild, or grandparent. A “family member” also includes the child or parent of the covered employee’s spouse, domestic partner or a member of the covered employee’s household. A “child” includes a biological child, adopted, foster child, legal ward or a person to whom the covered employee stand *in loco parentis*, regardless of age.

10. Can a covered employer require a covered employee to bring in a doctor's note?

Under the Earned Sick Leave Law, a covered employer can require documentation from a health care provider if the covered employee uses more than three consecutive workdays as sick leave. Employers may not require the health care provider to specify the medical reason for sick leave.

11. Can a covered employer require a covered employee to give advance notice when they want to take sick leave?

If the need is foreseeable, a covered employer can require notice of a covered employee's intention to use sick leave. If the need is unforeseeable, a covered employer may require the covered employee to give notice as soon as practicable. If notice is required, the procedure a covered employee must follow to use sick leave must be provided in writing.

12. What is retaliation? Can a covered employer retaliate against a covered employee for using earned sick leave?

Retaliation is "pay back" or "revenge." A covered employer cannot retaliate against a covered employee for using sick leave, asking about sick leave, informing coworkers about their rights under the Earned Sick Leave Law, reporting any suspected violation of the Earned Sick Leave Law, or participating in the investigation or enforcement of the Earned Sick Leave Law. Retaliation includes:

- Denying sick leave;
- Discharging, suspending, demoting, or reducing hours;
- Threatening to discharge, suspend, demote, or reduce hours;
- Reporting or threatening to report suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member to a federal, state or local agency;
- Using a "point system" for using leave, including earned sick leave, as a demerit;
- Interfering with or punishing an employee for participating in an investigation, proceeding or hearing.

Other acts by a covered employer may be retaliation.

For general questions about the Earned Sick Leave Law, contact the Westchester County Human Rights Commission at (914) 995-7710 or via email at humanrights@westchestergov.com. This general guidance is not intended to provide specific legal advice and is not a substitute for specific legal advice. If you have substantive questions about the Earned Sick Leave Law and its application, you are advised to consult an attorney to obtain specific legal advice.

To file a Complaint: Contact the Westchester County Department of Consumer Protection at (914) 995-2155 or visit their webpage at www.consumer.westchestergov.com.