
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

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State Imposes Cluster Action Plan in Face of Growing Infection Rates – With growing infection rates statewide and outbreaks in a number of locations upstate and downstate, public health experts are sounding the alarm about the beginning of a second wave of Covid-19. Governor Cuomo is striking a balanced tone, warning of potential trouble ahead and urging continued compliance with public health restrictions while identifying the specific locations of the hotspots driving the spike in infection rates and aggressively attacking the outbreak clusters.

The State has identified clusters of Covid-19 outbreaks in the boroughs of Brooklyn and Queens in New York City, in Orange and Rockland Counties, and in Binghamton. To stop the spread of clusters to the greater population the State is launching a “Cluster Action Initiative,” which will take dramatic actions within the cluster and precautionary measures in surrounding areas.

Clusters will be labeled with colors based on their positivity rates. The cluster zones will be designated with three different levels based on proximity to the cluster: red, orange, and yellow. Within each color code there will be new restrictions imposed:

Red zone (within 1 mile of the cluster) – dining for takeout/delivery only, in-person school closed/remote classes only, non-essential businesses must close, mass gatherings prohibited, religious gatherings limited to 25% occupancy with a maximum of 10 people

Orange zone (within 1.5 mile of the cluster) – outdoor dining only/tables limited to 4 people, in-person school closed/remote classes only, closing high-risk non-essential businesses (gyms, salons, etc.), mass gatherings limited to 10 people indoors & outdoors, religious gatherings limited to 33% occupancy with a maximum of 25 people

Yellow zone (within 2 miles of the cluster) – indoor & outdoor dining/tables limited to 4 people, in-person school open/mandatory testing required, mass gatherings limited to 25 people indoors & outdoors, religious gatherings limited to 50% occupancy

Takeout and delivery will continue to be permitted in the Orange and Yellow zones and cocktails-to-go continues statewide through at least November 3rd.

The state has set up this website where you can check to see if you're covered by the new cluster restrictions: <https://covidhotspotlookup.health.ny.gov/#/home>.

Paid Sick Leave, Ready or Not Here It Comes – On September 30th, the provisions of the New York Sick Leave Law (NYSSL) took effect. All employees began accruing sick leave as of September 30th; however, employees may not begin using the accrued sick leave until January 1, 2021. The new sick leave covers all employees. Full time, part time, seasonal, per-diem, and student workers will be eligible for sick leave. The law has different provisions depending on employer size (size is based on the previous year):

- For employers with four or fewer employees in any calendar year, each employee shall be provided with up to 40 hours of unpaid sick leave in each calendar year. This small employer must allow the time off, but the time is not paid.
- However, if the employer that employs four or fewer employees has a net income of greater than \$1 million, the employer must allow 40 hours of paid sick leave in each calendar year.
- For employers with between five and 99 employees in any calendar year, each employee shall be provided with up to 40 hours of paid sick leave in each calendar year.
- For employers with 100 or more employees in any calendar year, each employee shall be provided with up to 56 hours of paid sick leave each calendar year.

The three most important aspects of NYSSL are counting employees' sick time earned, the carryover provision and usage of sick leave.

NYSSL can be accrued or allotted. If using the accrual method, the accrual begins September 30th at a rate of one hour per 30 hours worked, up to a maximum of 40 or 56 hours depending on the employer size. The accrual method works well for employers with expected turnover, i.e., part time, seasonal, per-diem, and student workers.

The first challenge is having a reliable method of collecting hours worked. A good time and attendance system must be able to log in one hour of sick leave for every 30 hours worked by all employees and stop the accrual when the maximum is reached.

The employer can also simply allot a specific amount of paid sick leave starting January 1, 2021, as long as it meets or exceeds the maximums in the law.

Also, many employers only provide sick leave allotments to full-time employees. They will need to develop allotments for part time, seasonal, per-diem, and student workers.

The second challenge is the carryover provision of NYSSL. Until now, employers were not mandated to carry over any form of paid time off. Now, employers must allow the carryover of NYSSL at the end of the year. The only silver lining is the carryover cannot exceed the annual NYSSL limits.

The carryover provision is where employers should expect the most questions. If an employee doesn't take any sick days in a year, the maximum carries over to the new year. They would not be able to accrue any more leave because they're already at the max.

NYSSL can be used as soon as it is earned. Starting January 1, 2021, no waiting period is allowed. Employers can set a minimum usage of 4 hours and balances are not paid upon separation. NYSSL can be used for:

- Employee's mental or physical illness, or injury, or diagnosis, care, treatment, or preventive care for employee's mental or physical illness or injury.
- Covered family member's mental or physical illness or injury or diagnosis, care, treatment, or preventive care for a covered family member's mental or physical illness or injury.
- Absences related to employee's status as a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking; or
- Absences related to a covered family member's status as a victim of domestic violence, family offense, sexual offense, stalking, or human trafficking.

This is job-guaranteed sick leave, which means employers should prohibit discrimination, harassment and retaliation for employees who use sick leave.

Payroll Audit Reminder – The September 30, 2019 – September 30, 2020 workers' compensation insurance policy period has been completed, which means it is time to complete the payroll audit. NYSIF will be reaching out to all Safety Group 554 members on how to complete the audit this year. Due to COVID restrictions, all payroll audits will be completed remotely, either by completing a self-audit form or by uploading payroll and financial documents via the NYSIF secure portal. Fleury Risk Management, our group manager, is available to assist group members with any questions or concerns regarding successfully completing this required process.

It is important to complete your workers' compensation payroll audit as quickly and accurately as possible. This helps to ensure you are not only paying the correct insurance premium, but also expedites any potential premium credits you may be due. In addition, completing the audit process timely helps to ensure there are no delays in the delivery of any potential group dividend for the 2019-20 period once declared.

Time Off to Vote – New York State Election Law (§ 3-110) imposes several requirements on employers. All employers, regardless of size, must allow an employee up to two hours, with pay, to vote if such employee is a registered voter and “does not have sufficient time outside of his or her scheduled working hours, within which to vote on any day at which he or she may vote.” The law provides that if an employee has four consecutive hours either between the opening of the polls and the beginning of his or her working shift, or between the end of his or her working shift and the closing of the polls, he or she is deemed to have sufficient time to vote and is not eligible for paid time off.

An employee who requires time off to vote is required to notify their employer at least two days prior to Election Day. An employer may designate that time off must be taken either at the beginning or end of an employee’s work shift, unless otherwise mutually agreed. Given that the state now provides for early voting, it is unlikely that many employees will still qualify for additional paid time off to vote.

Finally, at least 10 days before Election Day, all employers are required to conspicuously post a notice regarding these time off provisions. (Note – many employers already satisfy this requirement as part of their general labor law postings.) The state Board of Elections has a sample poster you can use. We’ve posted it to our website or you can request a copy by email or by calling the State Association office.

Lottery Announces Changes to Draw Times – Starting November 2, the State Lottery is adjusting draw times for the Numbers, Win4, Take 5, Lotto, and Pick10 lottery games:

- Mid-day Numbers and Win4 draw time changes from 12:30 PM to 2:30 PM
- Take 5, Numbers and Win 4 evening draws start at 10:30 PM (Current: Numbers/Win 4 7:30 PM and Take 5 11:21 PM)
- Lotto draw changes to 8:15 PM (Current: 11:21 PM)
- Pick 10 draw close changes to 8 PM (Current: 7:30 PM); draw time remains the same