

KNOW YOUR RIGHTS: Monkeypox Virus (MPV) Benefits & Leave for New York Workers

Workers in New York State have rights to paid leave to care for themselves and their loved ones under a number of laws at the state and city level. Those laws can protect you if you need time off to deal with monkeypox virus (MPV). This document explains your rights under each of those laws and answers common questions you may have. **If you have additional questions, call A Better Balance's free, confidential legal helpline at 1-833-633-3222 (1-833-NEED-ABB) or visit <https://www.abetterbalance.org/get-help/>.**

1) What are the laws that might give me a right to paid time off?

If you work as an employee in New York State and do not work for the government, you are likely covered by New York State's:

- ***Paid sick time law.*** If you work in New York City, you may have additional rights under New York City's paid sick time law. Both the state and the city laws allow you to use your sick time if you or a family member is recovering from a physical or mental illness or injury or seeking preventive care (such as getting vaccinated), including due to MPV.
- ***Temporary disability insurance law.*** If you are unable to work due to MPV, you could potentially qualify for TDI payments. Whether MPV qualifies as a temporary disability will vary on a case-by-case basis.
- ***Paid family leave law.*** This law guarantees covered workers time off to care for a seriously ill or injured family member. Whether MPV qualifies as a serious illness or injury will vary on a case-by-case basis.

More information about each of these laws is available below.

A. New York State and New York City Paid Sick Time Laws

You may be eligible for sick time if you work as an employee in New York State and do not work for the government, regardless of number of hours worked. Workers throughout the state (including New York City) may be covered under the state law, while those who work in New York City may also have rights under the city's sick time law. Both laws apply if you are a full-time, part-time, or temporary employee. Both laws apply regardless of immigration status.

Both laws allow you to use your sick time if you or a member of your family is sick, hurt, or needs medical attention (including preventive care), including due to MPV. These broad purposes mean that, among other reasons, covered workers can take time off to get a vaccine, see a medical provider for questions or concerns about MPV, seek diagnosis and treatment of MPV, and recover from MPV.

In addition, the New York City sick time law makes it clear that you can use your sick time if as a result of a public health emergency your business is closed or your child's school or place of care is closed. The New York State sick time law does not allow you to use your sick time because your child's school or daycare is closed unless you would otherwise be able to use your sick time (for example, if you are sick or caring for a sick family member). However, because the law allows you to use sick time for preventive care, depending on the type of health emergency and reasons for closure, you may be able to use your sick time because your work or your child's school is closed.

You can find more information about New York State’s sick time law [here](#) and about New York City’s sick time law [here](#).

The amount of sick time that you’re entitled to depends on the size of your employer.

- Under both laws, you earn **1 hour** of sick time for every **30 hours** worked. You start earning paid sick time immediately when you start working for your employer and you can use it as soon as it’s earned, no matter how long you have been employed.
 - The amount of time you will be able to use will depend on the size of your employer. If your employer has **99 or fewer workers**, you can use up to **40 hours** per year. If your employer has **100 or more workers**, you can use up to **56 hours** per year. If your employer has **fewer than 5 workers** and a net income of less than \$1 million in the last tax year, your sick time may be unpaid—but you can’t be fired or punished for taking it.
 - If you work in New York City, you may be covered by both laws—in that case, generally speaking, your sick time under the city and state laws will run concurrently (so, for instance, if you take eight hours of sick time, it will count towards both your New York State and New York City sick time allotment).

B. New York State Temporary Disability Benefits

If you’re employed in the private sector (not in the government) in New York State, either full-time or part-time, you’re probably covered under the state’s temporary disability insurance (TDI) law, regardless of how many people work for your employer. The law applies regardless of citizenship or immigration status.

TDI, sometimes called disability benefits (DB), gives you the right to partial wage replacement while you are unable to work due to an off-the-job illness or injury. If you are **unable to work** due to MPV, you could potentially qualify for TDI payments. Your healthcare provider would need to certify that you are temporarily disabled.

You can receive TDI for up to 26 weeks in a year or for any particular “period of disability.” However, you can only receive TDI for the time you are disabled. You cannot receive TDI for any period of time in which you are working for pay for any employer, even if you are working from home or working reduced hours. There is generally a one-week unpaid waiting period for TDI. For covered workers, TDI provides cash payments equal to one-half (½) of the worker’s average weekly wage, **up to a maximum of \$170 per week**. TDI does *not* cover medical bills or any other expenses beyond those payments. **Your employer does not have to keep your job open for you (also known as “job protection”) while you are on TDI.** For more information on TDI benefits, see [here](#).

C. New York State Paid Family Leave

If you’re employed in the private sector (not in the government) in New York State, either full-time or part-time, you’re probably covered under the state’s paid family leave law, regardless of how many people work for your employer. The law applies regardless of citizenship or immigration status.

The law guarantees workers time off to bond with a new child (including adopted and foster children); care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent); or address certain military family needs. The law covers leave to care for a family member with a mental or physical illness, injury, condition, or disability that requires either in-patient treatment or ongoing supervision or treatment by a health provider. An ordinary illness, like the flu or a cold, would not

be covered unless complications develop or hospital care is needed. Leave to care for a seriously ill family member *could* include time off to care for a family member who is **seriously ill** with MPV.

Under the law, you can take **up to twelve weeks** of job-protected paid family leave. While you are taking paid family leave, you can receive monetary benefits of **67% of your average weekly pay, up to a cap**. In 2022, the cap is \$1,068.36 per week. For more information on taking paid family leave to care for a seriously ill loved one, see [here](#).

FREQUENTLY ASKED QUESTIONS ABOUT THESE RIGHTS

2) I am not currently able to work because I have MPV symptoms, am seeking a MPV diagnosis, am recovering from MPV, am obtaining a healthcare professional's advice about MPV, or am obtaining a MPV vaccine. What can I do to receive income while I'm not working?

New York State and New York City Paid Sick Time: Both of these sick time laws give workers sick time to recover from physical/mental illness or injury, seek medical treatment, or care for a sick family member. Therefore, if you are experiencing symptoms, seeking a medical diagnosis, recovering from MPV, or obtaining a healthcare professional's advice or an MPV vaccine, you are entitled to use your sick time.

- **If you work in New York State or New York City**, you earn **1 hour** of sick time for every **30 hours** worked. The amount of time you will be able to use will depend on the size of your employer, as explained in Section A of Question #1 above.

New York State Temporary Disability Insurance Benefits: This law gives you the right to monetary benefits up to \$170 per week if you are unable to work because of an injury or sickness that occurred “off the job.” Therefore, if you are **unable to work** because you are seriously ill with MPV, you could potentially qualify for TDI payments. Your healthcare provider would need to certify that you are temporarily disabled. Note that generally, you will not be paid for your first week of TDI—this is called the “waiting period.” For example, if your health provider says you are disabled for 4 weeks, usually you will receive only 3 weeks of paid TDI benefits. **Under the TDI law, your employer does not have to keep your job open for you (also known as “job protection”) while you are receiving TDI.** However, your employer *may* be required to hold your job if you qualify for leave under the federal Family and Medical Leave Act, time off as a reasonable accommodation under the Americans with Disabilities Act, or another law. (Please note that it is unlawful to punish a worker for requesting or needing a reasonable accommodation.) For more information on how these laws interact, see [here](#).

3) I am not currently able to work because I need to care for someone else who has MPV symptoms, is seeking a MPV diagnosis, is recovering from MPV, is obtaining a healthcare professional's advice about MPV, or is obtaining a MPV vaccine. What can I do to receive income while I'm not working?

New York State and NYC Paid Sick Time: Under both of these laws, you can use paid sick time to care for a **family member** who needs a medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care. It can be argued that the need to stay home due to a doctor's order about your family member's health condition is covered. See Section A of Question #1 for an explanation of sick time that's available for workers in New York State and New York City.

- **The definition of “family member” for whom you can take leave differs between the two laws:**

- Under New York State's paid sick time law, a family member is a child, spouse, domestic partner, parent, parent or child of a spouse or domestic partner, grandparent, grandchild, or sibling.
- Under New York City's sick time law, a family member is a child, spouse, domestic partner, parent, parent or child of a spouse or domestic partner, grandchild, grandparent, or sibling or someone related to you by blood or people whose relationship to you is like a family a relationship.

New York State Paid Family Leave might be available if the individual you are caring for is a covered family member **AND** that family member has a covered health need. New York's Paid Family Leave law guarantees covered workers paid time off to, among other things, care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent). The law covers leave to care for a family member with a mental or physical illness, injury, condition, or disability that requires either in-patient treatment or ongoing supervision or treatment by a health provider. An ordinary illness, like the flu or a cold, would not be covered. **Whether or not a MPV diagnosis qualifies as a serious health need under the paid family leave law will depend on the severity of their illness.**

Accordingly, if a family member is diagnosed with MPV, covered workers may, in certain circumstances, take New York Paid Family Leave to care for them. For more about New York Paid Family Leave, see [here](#).

4) I am concerned that my child's school may close this school year due to MPV. If that happens, what can I do to receive income if I'm not working in order to care for that child?

New York State Paid Sick Time: The New York State paid sick time law does not give workers a clear right to use their sick time because their child's school or daycare is closed unless they would otherwise be able to use their sick time (for example, if they are sick or caring for a sick family member). However, because workers are able to use sick time for preventive care of a physical or mental illness, injury, or health condition, depending on the type of health emergency and reasons for closure, workers may be able to use their sick time because their work or their child's school is closed. You can find more information on this paid sick time law [here](#).

New York City Paid Sick Time: The New York City paid sick time law gives workers the right to earn and use sick time for a variety of sick and safe time purposes whether related to MPV or not, including when a worker's child's school/place of care is closed due to a public health emergency. **See Question #1 for an explanation of sick time that's available to you under this law.** You can find more information on this paid sick time law [here](#).

5) I have an appointment to receive the MPV vaccine. What are my leave rights?

Receiving a vaccine is preventive medical care, and is covered under both the New York State and New York City paid sick time laws. Both laws also cover recovering from any experienced side effects of the MPV vaccine. See Question #1 for more information about rights you may have under these laws.

6) I care for a family member who has an appointment to receive the MPV vaccine. What are my leave rights?

Receiving a vaccine is preventive medical care, and caring for a family member who needs preventive medical care is covered under both the New York State and New York City paid sick time laws. Both laws

also cover caring for a family member who is recovering from any experienced side effects of the MPV vaccine. See Question #1 for more information about rights you may have under these laws.

7) How do I access my paid leave and benefits?

New York State Paid Sick Time: Paid sick time is provided directly by your employer so you do not need to submit an application to use it. However, you may need to provide an oral or written request to your employer prior to using your sick time. Additionally, your employer may require a doctor's note, but only after 3 or more consecutive previously scheduled workdays or shifts of absence (and the note does not have to specify your illness). However, if your employer requests a doctor's note, they must pay for any costs or fees associated with obtaining the documentation.

New York City Paid Sick Time: Paid sick time is provided directly by your employer so you do not need to submit an application to use it. For leave that is needed immediately, you only need to notify your employer as soon as possible. However, for advance leave (leave you know about before it is needed) you may be required to provide notice to your employer up to 7 days before you use the sick time. Additionally, your employer may require a doctor's note, but only after more than 3 consecutive days of absence (and the note does not have to specify your illness). However, if your employer requests a doctor's note, they must reimburse you for any fee your health care provider charges you to provide documentation.

New York State Paid Family Leave: In order to take paid family leave, you must submit an application to your employer's paid family leave insurance carrier. You can find more information on how to apply for paid family leave [here](#).

New York State Temporary Disability Insurance Benefits: In order to receive TDI benefits, you must submit an application to your employer's temporary disability insurance carrier. You can find more information on how to apply for TDI [here](#).

8) Is my job safe if I use these benefits?

New York State and New York City Paid Sick Time: Under both of these laws, you are entitled to return to your job and are protected against retaliation after you have taken sick time. Any leave under either of these laws should not be counted as an absence that may lead to or result in discipline, discharge, demotion, or any other adverse action.

New York Paid Family Leave: You are entitled to return to your job and are protected against retaliation after you have taken paid family leave. You are also entitled to continuation of your health insurance while you are on paid family leave. Any leave under this law should not be counted as an absence that may lead to or result in discipline, discharge, demotion, or any other adverse action.

New York Temporary Disability Insurance: Your employer **does not** have to keep your job open for you (also known as "job protection") while you are on TDI. Technically, your employer is not allowed to fire you or otherwise punish you solely *because* you took TDI payments. But, because the TDI law does not provide job protection, it can be extremely difficult to prove that you were fired or punished because you took TDI payments. Your employer *may* be required to hold your job if you qualify for leave under the federal Family and Medical Leave Act, time off as a reasonable accommodation under the Americans with Disabilities Act, or another law. (Please note that it is unlawful to punish a worker for requesting or needing a reasonable accommodation.) For more information on how these laws interact, see [here](#).

9) When can I start using my leave?

New York State and New York City Paid Sick Time: You begin earning sick time as soon as you begin employment and you can use it as soon as it's earned.

New York State Paid Family Leave: You are entitled to take paid family leave if you have worked for your employer for at least six months. If you work less than 20 hours per week, you may need to work for slightly longer (175 days) to qualify.

New York State Temporary Disability Insurance Benefits: You are entitled to receive Temporary Disability Insurance benefits once you have worked for your employer for at least 4 weeks (if full-time) or 25 days (if part-time).

10) How can I file a complaint if I think my rights have been violated?

New York State Paid Sick Time: If you believe your rights have been violated by your employer under New York State's paid sick time law, you can file a complaint with the New York State Department of Labor.

New York City Paid Sick Time: You have two years after a violation of the law to enforce your rights under the New York City Earned Safe and Sick Time Act by filing a complaint with the New York City Department of Consumer and Worker Protection.

New York State Paid Family Leave: If your employer fails to reinstate you following paid family leave, or retaliates or discriminates against you for taking paid family leave, you can file a request for reinstatement with the New York State Workers' Compensation Board by following the steps detailed [here](#).

New York State Temporary Disability Insurance: Technically, your employer is not allowed to fire you or otherwise punish you solely *because* you took TDI payments. But, because the TDI law does not provide job protection, it can be extremely difficult to prove that you were fired or punished because you took TDI payments. If you believe you were fired or otherwise punished solely *because* you took TDI payments, you have two years after the violation of the law to enforce your rights by filing a complaint with the New York State Worker's Compensation Board.

All covered workers are protected against being fired or punished for using New York State or New York City sick time, paid family leave benefits or, in limited circumstances, temporary disability insurance benefits (see Question #10 above). If you have a problem—or want more information—call A Better Balance's free legal clinic at 1-833-NEED-ABB.

10) Where can I learn more and get help?

If you have questions, call A Better Balance's **free, confidential legal helpline at 1-833-633-3222** (1-833-NEED-ABB) or visit <https://www.abetterbalance.org/get-help/>.

This fact sheet does not represent an exhaustive overview of the laws described and does not constitute legal advice. Additional legal provisions not described in this fact sheet may apply to a worker's specific circumstances or category of employment.