

New York State's Lawful Absence Law: Rights, Remedies, and What It Means for Abusive Attendance Policies

A new law in New York State guarantees workers expanded remedies if their employer penalizes them for any absence that is legally protected under federal, state, or local law, including time off covered by New York State Paid Family Leave or New York State's or City's Paid Safe and Sick Time Laws. This includes being penalized under absence control policies (also known as "no-fault" attendance policies). Such policies unlawfully discipline workers for legally-protected absences, including those related to pregnancy, sickness, disability, and caregiving responsibilities, chilling workers from exercising their legal rights.

What does New York's new law do?

The new law ([A8092B](#), which amends N.Y. Labor Law § 215) makes clear that it is illegal to fire, threaten, penalize, discriminate, or otherwise retaliate against a worker for an absence that is legally protected by federal, state, or local law.

This includes, but is not limited to, assigning points (or deducting from an allotted bank of time) under an absence control policy or system for legally-protected absences, such as those related to disability, pregnancy, sickness, and caregiving obligations. **For example:**

- It is unlawful to assign a point to a worker for taking time off as a reasonable accommodation for their disability or [pregnancy-related health needs](#).
- It is unlawful to fire a worker for using [New York State Paid Family Leave](#).
- It is unlawful to demote a worker for using [New York State](#) or [New York City Paid Safe and Sick Leave](#) to take a child to the doctor.
- It is unlawful to deduct points from a worker's allotted bank of time for an absence protected by the [Family and Medical Leave Act](#) (FMLA).

These are just some examples. Other examples of unlawful retaliation may include penalizing a worker for using legally-protected jury duty leave, voting leave, donor leave, domestic violence leave, and more. Contact [A Better Balance's helpline](#) for additional information.

What if my employer violates the law?

- If your employer penalizes you for legally-protected absences — such as by assigning you points, disciplining you, or firing you — you can sue in court for "all appropriate relief." That can include back pay, front pay, damages (including liquidated damages), reinstatement, and attorneys' fees. You have two years to bring a lawsuit.
- You can also [file an administrative complaint](#) with the New York State Department of Labor (DOL). The DOL can award back pay, front pay, liquidated damages, and attorneys' fees, and order you reinstated to your job. The DOL can also fine your employer up to \$20,000. You are not required to file with the DOL before bringing a lawsuit.
- Your employer may be charged with a misdemeanor.
- You may have additional rights and remedies under other federal, state, or local laws.

Does this law apply to me?

The new law applies to workers in New York State [regardless of their citizenship or immigration status](#).

When does this law go into effect?

February 20, 2023.

Where can I learn more or get help?

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

*This fact sheet is for informational purposes only and does not constitute legal advice.
It is advisable to consult an attorney for additional information and tailored advice.*