

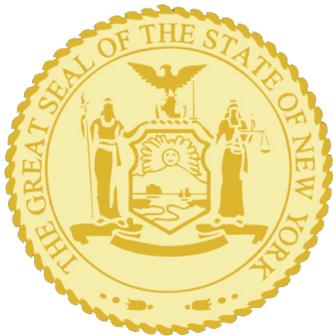
If a worker is sent home based on what is later found to be a discriminatory policy, is an employer responsible for pay?

The Human Rights Law provides that upon a determination of discrimination, back pay and other damages may be awarded.

Does a worker have to prove they are ill, no longer ill, or have never been ill? Are individuals provided with documentation to that effect?

An employer may require documentation from a health care provider or health department to substantiate a request for reasonable accommodation for a disability, such as time off from work, and, in the appropriate circumstances, may require medical documentation to support a return to work following an illness or other disability.

If an employee has not been ill, there is no reason for an employer to require proof to that effect, and to do so may be considered unlawful discrimination based on perceived disability.



FOR MORE INFORMATION

Everyone has an obligation to help prevent the spread of infectious diseases. For the most up-to-date guidance on infectious diseases, please visit the Centers for Disease Control Website www.cdc.gov.

State resources:

- For questions regarding Ebola screening and protocols, please visit: www.health.ny.gov.
- For questions about earned time off or to file a complaint, please call: 1-888-4NYSDOL (469-7365).
- If you believe you have been discriminated against, visit: www.dhr.ny.gov or call: 1-888-392-3644.

Further information can be found here:

- OSHA webpage on Ebola: www.osha.gov/SLTC/ebola/index.html
- CDC webpage on Ebola: www.cdc.gov/vhf/ebola/index.html
- NIOSH webpage on Ebola: www.cdc.gov/niosh/topics/ebola/



Employers' Rights and Obligations Pertaining to EBOLA

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EBOLA BASICS

Ebola is transmitted through direct contact with the blood or bodily fluids of an infected symptomatic person or through exposure to objects (such as needles) that have been contaminated with infected secretions.

Individuals who are not symptomatic are not contagious. In order for the virus to be transmitted, an individual would have to have direct contact with an individual who is experiencing symptoms.

LEAVE POLICY

Payment for time not worked (sick time, personal leave, holidays and vacations) is considered a fringe benefit. The specific conditions of these benefits are at the discretion of the employer and are not stipulated by state law. However, New York State law requires any policy on time not worked to be distributed to all employees in writing or to be publicly posted.

Only payment for time actually worked is required unless the employer has established a policy to grant such pay. If an employer's policy entitles an employee to earned payment for time not worked, State Law requires that employer to pay workers according to that agreement.

Once an employee earns accruals, any subsequent changes to an employer's policy only affect accruals after that new policy is distributed (they are not retroactive).

THE NYS HUMAN RIGHTS LAW

The New York State Human Rights Law protects people who have disabilities from unlawful discrimination. Ebola would be considered a disability under the Human Rights Law.

The Law also protects those who are regarded by others as having a disability. People are also protected based on their race or national origin, among other areas. These protections cover employment, housing and places of public accommodation.

It is unlawful to deny access to public places, housing or employment based on the fact that someone is of a particular race or nationality, or because of the perception that someone has an illness.

Time off for recovery is generally considered a reasonable accommodation for a temporary disability.

FREQUENTLY ASKED QUESTIONS

Can an employer tell a worker not to come in or send a worker home who is feared to have been exposed to Ebola?

Unless there is a written agreement (i.e. a distributed employer policy) to the contrary, New York State law allows an employer to keep someone from working or to send someone home for any reason that isn't considered unlawful discrimination.

The Human Rights Law provides that it is unlawful to discriminate against people who are regarded by others as having a disability.

Therefore, for an employer to deny employment based on the perception of a disability or an illness may be considered an unlawful discriminatory practice. In this context, perception may include assuming that someone is sick based on recent travel history or country of origin. It is unlawful for an employer to deny employment based on the national origin or race of the employee, among other protected bases.

While the employee is home, is an employer required to pay them?

If an employer's policy entitles an employee to leave benefits, state law requires that the employer pay. The employee may also be entitled to call-in pay. Call-in pay is wages owed to employees for reporting to work on a given day even if they are sent home early.

Employees must be paid a minimum of four hours (three in the hospitality industry), or the number of hours in the regularly scheduled shift, whichever is less. If they are not being paid, individuals may be eligible for Unemployment Insurance benefits.

Can an employer fire an employee who has either contracted Ebola, come in contact with someone who has contracted Ebola, or has spent time in a country with an Ebola outbreak?

Ebola would be considered a disability under the Human Rights Law. It is an unlawful discriminatory practice to terminate an employee based on a disability, the perception of a disability, or their race or national origin.