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NYC Amends Rules and FAQ Relating to the Earned Safe and Sick Time Act

In light of the 2017 amendment to the New York City Earned Sick Time Act, now known as the Earned Safe and Sick Time Act ("ESSTA"), the Department of Consumer Affairs Office of Labor Policy and Standards ("OLPS") has amended the Rules and Frequently Asked Questions relating to the ESSTA to provide clarification on employee rights and employer obligations.

Recap of the Earned Safe and Sick Time Act

The ESSTA requires covered employers to provide employees with up to 40 hours of paid time off, per calendar year, for any of the following:

- the employee's or employee's family member's mental or physical injury or illness or need for preventive medical care;
- closure of the employee's workplace due to a public health emergency or employee's need to care for a child whose school or care facility is closed as a result of a declared public health emergency; or
- the employee or a covered family member has been a victim of a domestic violence, sexual offense, stalking, or human trafficking.

Employers of five or more employees, who work more than 80 hours in a calendar year in New York City, are required to provide paid leave. Employers of fewer than five employees are required to provide unpaid leave.

Employees may accrue safe and sick time at the rate of one hour per 30 hours worked, up to the maximum of 40 hours per year. Safe and sick time begins to accrue on the first day of employment, but employees may only begin to use safe and sick time 120 days after employment begins.

Under the ESSTA, employers are required to maintain safe and sick time policies and provide required notice of employee rights to all employees.

Changes to the Rules and FAQ

The OLPS recently amended the Rules and Frequently Asked Questions (“FAQ”) to be in line with the amendments of the ESSTA. Below are some of the more significant changes.

- **Employer Policies**

Most notably, the Amended Rules require that an employer’s safe and sick time policy be in one document and be distributed, rather than posted or distributed, to all employees upon commencement of employment, within 14 days of the effective date of any changes to the policy and/or upon request by the employee. The Amended Rules also require that employers who use terms other than “safe and sick time” to describe the leave provided by an employer meet the requirements of the ESSTA, the employer’s policy must state that such leave may be used by an employee for any of the purposes set forth in the ESSTA without any condition prohibited by the ESSTA. Lastly, a description of the confidentiality requirements of Section 20-921 of the Administrative Code must be included in the employer’s policy.

- **Joint Employers**

The Amended Rules define a joint employer as two employers, each of whom exercise some control over the work or conditions of an employee. Under the Amended Rules, to determine the number of employees, joint employers must count every employee it employs for hire or permits to work, joint or not. Joint employers are individually and jointly liable for violations of the ESSTA and may be considered joint employers even if they are separate and distinct entities.

- **Other Notable Amendments**

The Amended Rules also clarify what constitutes adverse action taken by an employer against employees and what evidence can establish a causal connection between the adverse action and the exercise of rights. The section relating to enforcements of the ESSTA and related penalties has also been amended. Furthermore, the Amended Rules also replace the provision about the method of calculating payment for sick time when an employee is paid on a flat rate basis, rather than a piecework basis as the Rules previously stated.

Takeaway for Employers

Employers, including joint employers, should review their Safe and Sick Time policies to ensure that they comply with the Amended Rules. Employers should also ensure that their method of dissemination of the policies and notice of rights are in compliance. We are available to assist employers in better understanding the ESSTA and their obligations as employers.

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If you have any questions regarding this alert, or any other issue, please do not hesitate to contact us.

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