



October 9, 2020

## **New York City Amends Earned Safe and Sick Leave Law to Align with State Sick Leave Law**

On April 3, 2020, Governor Andrew Cuomo signed into law a statewide sick leave requirement, mandating that employers provide sick leave to all employees (“NYS Sick Leave Law”). The NYS Sick Leave Law took effect on September 30, 2020. See our [previous Client Alert](#).

On September 28, 2020, Mayor Bill de Blasio signed a bill amending NY City’s Earned Safe and Sick Time Act (“NYC ESSTA”) to align with the new State law. Notable changes include the following

### **NYC ESSTA Sick Leave Requirements**

Similar to the NYS Sick Leave Law, NYC ESSTA now provides that employers must provide employees with safe and/or sick leave as follows:

- Employers with 4 or fewer employees, with a net income of \$1 million or less in the previous tax year, must provide their employees with up to 40 hours of unpaid safe/sick time per calendar year.
- Employers with 100 or more employees must provide their employees with up to 56 hours of paid safe/sick time per calendar year.

- The amendment does not change the requirement that employers with 5 to 99 employees must provide their employees with up to 40 hours of paid safe/sick time per calendar year.

## **Accrual Requirements**

- Employees will begin accruing newly provided safe/sick time on September 30, 2020, at the rate of one hour for every 30 hours worked.
- Employees will be able to use any newly provided safe/sick time starting January 1, 2021.
- Effective January 1, 2021, there is no waiting period for use of accrued safe/sick time.

## **Carryover Requirements**

- For employers with 99 or fewer employees, up to 40 hours of unused safe/sick time shall be carried over to the following calendar year. However, an employer need not carry over unused paid safe/sick time if the employee is paid at the end of the calendar year for any unused safe/sick time. In addition, an employer with 99 or fewer employees may limit the use of safe/sick time to 40 hours per calendar year.
- For employers with 100 or more employees, up to 56 hours of unused safe/sick time shall be carried over to the following calendar year. However, an employer need not carry over unused paid safe/sick time if the employee is paid at the end of the calendar year for any unused safe/sick time. In addition, an employer with 100 or more employees may limit the use of safe/sick time to 56 hours per calendar year.
- Employers are not required to pay employees for unused safe/sick time upon the employee's termination, resignation, retirement, or other separation from employment.

## **Additional Requirements**

- **Documentation Requirement.** Effective September 30, 2020, employers must list on employee's paystubs, or any document issued each pay period, the amounts of accrued and used leave, and the total balance of accrued leave. However, employers working in good faith on implementing this requirement will have up to November 30, 2020 to ensure compliance without a penalty.

- **Notice of Rights Requirement.** Within 30 days of September 30, 2020, employers must provide employees with written notice of their right to safe/sick time, including the accrual and use of safe/sick time, the calendar year of the employer, and the right to be free from retaliation and to file a complaint with the Department of Consumer and Worker Protection. For new employees, notice must be provided at time of hire. The updated notice of rights must also be posted at the employer's worksite.
- **Reimbursement Requirement.** Effective September 30, 2020, employers must reimburse employees for all reasonable costs or expenses incurred for purposes of obtaining supporting documentation from a doctor or other third party as requested by the employer after three (3) consecutive days of leave.
- **Heightened Retaliation Prohibition.** Employers may not take any adverse actions against an employee that penalizes or deters an employee for using safe/sick time. Examples of adverse actions are broadened, and a violation is established when it is shown that a protected activity was a motivating factor for an adverse action, whether or not other factors motivated the adverse action.
- **Enforcement Provisions.** The amended statute allows the City to open administrative investigations into potential violations of NYC ESSTA, and to bring a civil litigation in court against employers for violation any provision of the statute. The amendments further clarify that employers may be fined a civil penalty ranging from \$500 to \$2,500 for violations of the statutory provisions, and civil penalties of up to \$15,000 for a finding that an employer engaged in a pattern or practice of violations.

## **Takeaway**

Employers in NYC should review their sick leave policy to determine whether it meets the requirements of the amended NYC ESSTA, and provide notice to current and new employees of their rights under the new provisions. Employers should also prepare for the new documentation requirement of reporting accrued and used leave time on employees' paystubs.

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

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