

NYC Amends Sick Leave Law to Include Safe Time

On October 17, 2017, the New York City Council passed a bill that expands coverage under the city’s paid sick leave law. The amended law broadens the definition of covered “family member,” and adds family offenses, sexual offenses, stalking, and human trafficking to the list of covered reasons for protected leave. If, as expected, Mayor Bill de Blasio signs the bill, the renamed “Earned Safe and Sick Time Act” would become effective 180 days thereafter. Employers should review their leave and other employment policies to determine what changes may be needed to ensure compliance.

Background

Since 2014, New York City has required private-sector employers to provide a minimum amount of job-protected, paid sick time to eligible employees. With certain narrow exceptions, the NYC Earned Sick Time Act (ESTA) allows full-time and part-time employees who work in NYC for more than 80 hours in a year to accrue up to 40 hours of paid sick leave per year that may be used for their own or a covered family member’s illness, injury or medical condition. Employees may also use accrued sick leave for reasons relating either to the closure of their workplace or their child’s school or day care because of a public health emergency.



As originally passed, ESTA applied to employers with 20 or more employees, but was later amended to expand coverage to employers with five or more employees and to broaden the definition of covered “family member.” (See our [March 27, 2014 For Your Information.](#)) Since then, NYC’s paid sick leave rules have been amended, and the city has issued FAQs and other administrative guidance addressing employers’ obligations under ESTA.

Earned Safe and Sick Time Act

On October 17, the NYC Council passed an amendment ([Int. No. 1313-A](#)) to ESTA that would allow eligible employees to use earned time off for reasons related to their own or a covered family member’s status as a victim of a family offense, sexual offense, stalking, or human trafficking (collectively, “safe time”). To reflect the expansion of coverage, ESTA would be renamed the “Earned Safe and Sick Time Act.” If, as expected, Mayor Bill de Blasio

signs the bill, NYC will join more than two dozen other municipalities with paid sick leave ordinances – including San Francisco, Washington DC, Seattle, Philadelphia, Los Angeles, Chicago, San Diego, and Minneapolis – that also permit employees to use that leave for some form of safe time. (See, for example, our [May 21, 2015](#) and [October 6, 2014](#) issues of *For Your Information*.)

Definitions

Under ESTA, employees may use their earned sick time to care for a “family member,” defined as the employee’s child, grandchild, spouse, domestic partner, parent, grandparent, sibling, or the child or parent of an employee’s spouse or domestic partner. The Earned Safe and Sick Time Act would broaden the definition of family member for both sick and safe time to also include “any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.”

The amended law defines sexual offenses, stalking, human trafficking, and other family offense matters by reference to the New York Penal Law. “Human trafficking” includes sex trafficking and labor trafficking, and a “family offense matter” includes a broader class of household or family members than in ESTA and acts or threats of acts that may constitute offenses such as disorderly conduct, harassment, reckless endangerment, assault and identity theft between spouses or ex-spouses, parent and child, or members of the same family or household.

Using Paid Sick/Safe Time

In addition to the permitted uses of earned sick time under ESTA, eligible employees would be able to use safe time under the expanded law for specified reasons. When an employee or the employee’s family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking, the employee will be eligible to use paid sick/safe time off from work to:

- Obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking
- Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee’s family members from future family offense matters, sexual offenses, stalking, or human trafficking
- Meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit
- File a complaint or domestic incident report with law enforcement
- Meet with a district attorney’s office
- Enroll children in a new school
- Take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee’s family member or to protect those who associate or work with the employee

Documenting Use

As with sick time, employers may require reasonable documentation for an absence of more than three consecutive workdays that an employee's use of safe time is for reasons the law allows. Such documentation may be provided by a victim services organization, attorney, clergy member, medical or other professional service provider, or by production of police, court records, or even a notarized letter from the employee explaining the need for safe time. However, an employer cannot require documentation that details employees' or their family members' status or perceived status as a victim of family offenses, sexual offenses, stalking, or human trafficking.

Notice

Employers may require up to seven days advance notice of a foreseeable need to use safe time and notice as soon as practicable for unforeseeable absences – the same notice required for earned sick time.

Employers will be required to provide written notice to existing employees of their right to accrue and use safe time within 30 days of the effective date of the expanded law, and to new hires after that date at the commencement of employment.

In Closing

NYC is poised to expand coverage under the city's paid sick leave law to include additional family members and safe time. Employers should review existing leave and other employment policies to determine what changes may be needed to ensure compliance if, as expected, coverage is expanded.

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