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NYC amends paid sick leave law

New York City amended its Earned Safe and Sick Time Act effective September 30. While most of the modifications are intended to better align NYC's law with New York state's recently enacted sick leave law, they also imposed new obligations on NYC employers.

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Background

Since 2014, New York City's Earned Sick Time Act has required private-sector employers with five or more employees to provide a minimum amount of job-protected, paid sick time to eligible employees. (See our [March 27, 2014 FYI](#).) The law was later amended to extend coverage to absences related to the employee's or their covered family member's status as a victim of a family offense, sexual offense, stalking, or human trafficking and renamed the "Earned Safe and Sick Time Act" (ESSTA). (See our [November 27, 2017 FYI](#).)

On April 3, 2020, New York State enacted a statewide paid sick leave (PSL) law, which is separate and distinct from the state's COVID-19 quarantine leave law. The new leave mandate took effect on September 30 and allows employees to begin using accrued PSL time on January 1, 2021. While it did not preempt existing local laws — including ESSTA — some of its provisions offer more generous PSL benefits and employee protections. (See our [September 15, 2020 FYI](#).)

Amendments

On September 28, NYC Mayor Bill de Blasio signed [Int. No 2032-A](#) into law, amending ESSTA effective September 30, 2020. While most of the modifications are intended to better align the city's law with the state's new PSL law, they also imposed additional obligations on NYC employers.

Leave requirements

Prior to the ESSTA amendments, NYC employers with five or more employees who worked more than 80 hours in a calendar year were obligated to provide up to 40 hours of paid safe and sick leave,

and employers with fewer than five employees were required to provide unpaid safe and sick leave. The amendments change this obligation, altering the amount of leave that NYC employers must provide to mirror the requirements of the new state PSL law. Under the amended law, NYC employers will be required to provide safe/sick time in varying amounts based on their size and income as follows:

- NYC employers with four or fewer employees and a net income of less than \$1 million in the prior tax year must provide up to 40 hours of unpaid safe/sick leave per calendar year and carryover of up to 40 hours.
- NYC employers with 5-99 employees and employers with four or fewer employees and a net income greater than \$1 million in the prior tax year must provide up to 40 hours of paid safe/sick leave per calendar year and carryover of up to 40 hours.
- NYC employers with 100 or more employees (regardless of employer income) must provide up to 56 hours of paid safe/sick leave per calendar year and carryover of up to 56 hours.

Employees began accruing newly provided safe/sick time under the revised law on September 30. However, employers may restrict use until 2021. The ESSTA amendments also eliminate the 120-day waiting period for new hires to use accrued leave, allowing employees to use time as it accrues.

New employer obligations

Along with imposing additional obligations on NYC employers, the amendments eliminate the prior threshold eligibility requirement — that an employee work more than 80 hours in a calendar year within NYC — making any person employed full-time or part-time in the city eligible for ESSTA leave. Among other things, the amended law also requires employers to:

- Provide employees each pay period on a pay statement or in a separate writing the amount of safe/sick time accrued and used during the period and their total accrued leave balance
- Reimburse employees for their fee/costs/expenses for obtaining requested documentation from a doctor or other third party to support the need for leave
- Post an updated notice of rights
- Provide an updated notice of rights to current employees no later than October 30, 2020 and to subsequent hires at the commencement of employment

Other key provisions:

- Expand the definition of prohibited “adverse actions” against an employee for exercising or attempting to exercise rights under ESSTA or interfering with them
- Allow the NYC Department of Consumer and Worker Protection to open administrative investigations into potential violations of the law

- Permit the NYC Corporation Counsel (or its designee) to commence a civil action against an employer for violating any provision of the law
- Clarify fines for violations, including penalties ranging from \$500 to \$2,500
- Incorporate civil penalties of not more than \$15,000 in any civil action if an employer is found to have engaged in a pattern or practice of violations and up to \$500 to each employee covered by the employer's policy or practice of refusing to allow the use of earned leave under the ESSTA

In closing

NYC employers should update their policies and practices to ensure compliance with both the ESSTA amendments and the NYS PSL Law that took effect on September 30. Each pay period, they should provide employees on their pay statements or in a separate writing the amounts of safe/sick time accrued and used during the period as well as their total balance of accrued leave.

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