

New York City Amended Sick Leave Law

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On September 28, 2020, New York City Mayor Bill de Blasio signed Council Int. No. 2032-A, which amended the New York City Earned Safe and Sick Time Act (“NYCESSTA”) to correspond with the recently updated New York State Sick Leave Law (“NYSSL”) that took effect on September 30, 2020. See our previous bulletin [New York Enacts Statewide Paid Sick Leave Law](#).

Most of the recent modifications aim to align the NYCESSTA with the NYSSL. Additionally, the amendments to the New York City law impose several additional requirements, and potential legal liability, on employers.

I. Changes that Align the City Law with the State Law

Certain of the amendments to the NYCESSTA are intended to create consistency between City and State law and include the following changes:

Amount of Sick Leave

- Employers with 4 or fewer employees in a calendar year and a net income of \$1 million or less in the previous tax year must provide each employee with at least 40 hours of unpaid sick leave each calendar year.
- Employers with 4 or fewer employees in any calendar year and a net income of more than \$1 million in the previous tax year must provide each employee with at least 40 hours of paid sick leave each calendar year.
- Employers with between 5 and 99 employees in any calendar year must provide each employee with at least 40 hours of paid sick leave each calendar year.
- Employers with 100 or more employees in any calendar year must provide each employee with at least 56 hours of paid sick leave each calendar year.

Unused Leave/Carryover

An employee may carry over unused sick leave to the following calendar year, as follows:

- for employers with 99 or fewer employees, up to 40 hours of unused sick leave may be carried over to the following calendar year;
- for employers with 100 or more employees, up to 56 hours of unused sick leave may be carried over to the following calendar year.

Accrual

Employees may begin accruing sick leave in accordance with the above schedule on September 30, 2020 and will be able to use any newly provided sick leave starting on January 1, 2021. Additionally, as of January 1, 2021, there is no waiting period for use of accrued sick leave. Previously, newly hired employees had to wait 120 days before they could use any accrued sick leave.

Domestic Workers

Domestic workers are defined in Section 2(16) of the NY Labor Law and include persons who provide care for a child, companionship for a sick, convalescing or elderly person, housekeeping, or any domestic service in a home or residence. The amended NYCESSTA removes delayed accrual times and diminished leave times for domestic workers. Employers

must now provide domestic workers with 40 hours of paid sick leave.

II. Additional Changes to the NYCESSTA

The amendments impose several additional requirements on New York City employers:

Reporting Requirement

Employers are now required to document the amount of sick leave an employee accrues and uses, as well as the employee's total balance of accrued sick leave. The documentation should be included on a pay statement or other form of written notice provided to the employee each pay period.

Cost of Medical Documentation

For an absence of more than three consecutive work days using sick time, an employer may require reasonable documentation of the need for the absence and use of sick leave. If a health care provider charges an employee a fee for the documentation, the employer is required to reimburse the employee for that fee.

Notice of Employee Rights

Employers must conspicuously post a Notice of Employee Rights at the employer's place of business in an area accessible to employees (e.g., lunchroom, locker room, etc.). The Notice of Employee Rights (which has not yet been, but eventually will be issued by the New York City Department of Consumer and Worker Protection) must also be provided to each employee at the commencement of employment. For employees who were employed prior to the effective dates of these provisions, such notice should be provided within 30 days of the law's effective date.

Retaliation

The amendments expand the definition of retaliation under the NYCESSTA and prohibit any adverse action against an employee that penalizes an employee for, or is reasonably likely to deter an employee from, exercising or attempting to exercise rights or that interferes with an employee's exercise of rights under the NYCESSTA. Adverse actions include, but are not limited to: threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights, blacklisting, maintenance or application of a punitive absence control policy, and actions related to perceived immigration status or work authorization. An employee need not explicitly refer to a provision of this chapter or implementing rules to be protected from an adverse action. The protections apply to any person who mistakenly but in good faith asserts his or her rights or alleges a violation of the NYCESSTA.

Civil Penalties

In any civil action commenced pursuant to the NYCESSTA, an employer may be liable for a civil penalty of not more than \$15,000 in the event that the employer is found to have engaged in a pattern or practice of violations of the NYCESSTA. Any civil penalty recovered shall be paid into the general fund of the City. Employers may also be required to pay up to \$500 to each employee who has been denied the right to use sick time in violation of the NYCESSTA.

If you have questions about these laws, please contact **Blythe E. Lovinger** at +1 (212) 407-7770, **Jonathan A. Wexler** at +1 (212) 407-7732, or any other Vedder Price attorney with whom you have worked.

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