

New and Amended Sick Leave Laws in New York State and New York City

Insights

November 20, 2020

A recent New York law and an amendment to New York City's existing Earned Safe and Sick Time Act ("ESSTA") will require employers to update their policies and issue notices before the end of the year. Below is a summary of the new NY law, the amended NYC law and their impact on employers.

NEW YORK STATEWIDE SICK LEAVE LAW

Overview

- Although New York City's Earned Sick and Safe Time Act ("ESSTA") already required New York City employers to provide paid or unpaid sick and safe time to employees, earlier this year, New York State Governor Andrew Cuomo signed a budget bill that included an amendment to New York Labor Law requiring New York employers statewide to provide paid or unpaid sick leave to their employees.^[1]
- The New York State Sick Leave Law ("NYSSLL") took effect on September 30, 2020, but employees may not begin using any accrued sick leave under the statewide law until January 1, 2021.

1. How much leave are employers required to provide under NYSSLL?

- The amount of leave that employers must provide, and whether the leave must be paid, depends on the company's size and net income:

Number of Employees	Employer Sick Leave Requirements
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0 - 4	If net income is \$1 million or less in the previous tax year, the employer is required to provide up to 40 hours of unpaid sick leave per calendar year ^[2] .
0 - 4	If net income is greater than \$1 million in the previous tax year, the employer is required to provide up to 40 hours of paid sick leave per calendar year.
5 - 99	Up to 40 hours of paid sick leave per calendar year.
100 +	Up to 56 hours of paid sick leave per calendar year.

- Employees may begin accruing leave at a rate of one hour for every 30 hours worked, beginning on September 30, 2020, or when employment begins, whichever is later.
- Employers may also frontload the total amount of sick leave at the beginning of the calendar year, or when employment begins, but cannot later reduce the amount of sick leave available to employees based on the actual number of hours worked.
- Employers are permitted to require that sick leave be used in increments, with four hours being the maximum increment an employer may set for the use of sick leave under this law.

2. When can employees begin using leave under the NYSSL?

- Employees may begin using accrued sick leave on January 1, 2021 and employees hired after January 1, 2021 must be allowed to use sick leave as it accrues. Under the NYSSL, there is no minimum period of employment before an employee can begin using accrued sick leave.

3. For what reasons can employees use leave under the NYSSL?

- Employees may use leave after a verbal or written request for the following reasons impacting themselves or a member of their family for whom they are providing care or assistance with care:
 - For mental or physical illness, injury, or health condition, regardless of whether it has been diagnosed or requires medical care at the time of the request for leave;
 - For the diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or need for medical diagnosis or preventive care; or

- For an absence from work when the employee or employee's family member has been the victim of domestic violence as defined by the State Human Rights Law, a family offense, sexual offense, stalking, or human trafficking due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking, or human trafficking:
 - to obtain services from a domestic violence shelter, rape crisis center, or other services program;
 - to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
 - to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;
 - to file a complaint or domestic incident report with law enforcement;
 - to meet with a district attorney's office;
 - to enroll children in a new school; or
 - to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. What are the requirements with respect to tracking and documentation?

- Employers must track the amount of sick leave provided to employees and that information must be kept for at least six years.
- An employee may request, verbally or in writing, a summary of the amount of sick leave they have accrued and used in the current calendar year or any previous calendar year. Employers are required to provide the requested information to the employee within three business days.
- Employers are prohibited from requiring that employees disclose any confidential information related to their request to use sick leave.

5. What is the impact on existing sick leave policies?

- If an employer has an existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carryover, and use requirements, this law does not present

any further obligations on that employer.

- For New York City employers, please see the section below on the recent amendment to the New York City ESSTA.

On October 20, 2020, New York State issued its first guidance, titled “[New York State Paid Sick Leave FAQ](#),” consisting of 44 questions and answers.

NEW YORK CITY AMENDMENT TO THE EARNED SAFE AND SICK TIME ACT

Overview

- On September 28, 2020, New York City Mayor Bill de Blasio signed a bill that brought the New York City Earned Safe and Sick Time Act (“ESSTA”) in line with requirements under the NYSSLL, discussed in the section above. The amendments to ESSTA went into effect on September 30, 2020 and impose additional obligations on employers in New York City.

1. How much leave are NYC employers required to provide under ESSTA?

- Employees must be allowed to accrue, or be granted, leave in the same amounts as described above, consistent with the NYSSLL, effective as of January 1, 2021.
- Employees of large employers (100 or more employees), may use any accrued amount of paid safe/sick time that exceeds 40 hours per calendar year on or after January 1, 2021.

2. Are there carry over requirements?

- Employers are required to allow employees to carry over up to 40 or 56 hours (depending on employer size), but employers can cap the use of safe/sick time at 40 or 56 hours (depending on employer size).
- Employers who frontload safe/sick time do not need to permit employees to carry over at the end of the year. But employers who switch from an accrual system to a frontloading system must pay out any unused accrued leave at the end of the year in which the safe/sick time was accrued.

3. When can employees begin using leave under ESSTA?

- Previously, under ESSTA, employers could prohibit employees from using accrued safe and sick leave until they had reached 120 days of employment. Under the new amendment, employees must be permitted to use safe and sick time as it accrues.

- The amendment also eliminated the requirement that employees must work 80 hours within NYC to be eligible for safe/sick time under ESSTA.

4. Are there notice and reporting requirements?

- Yes. Employers are required to provide written notice of employee rights at the commencement of employment, or for current employees, within 30 days of the effective date of the law (i.e., October 30, 2020). The NYC Department of Consumer and Worker Protection published an updated [Notice of Employee Rights](#) on October 21, 2020.
- Employers must now report the amount of safe/sick time accrued and used during a pay period and an employee's total balance of accrued safe/sick time is required to be noted on a pay statement or other form of written documentation provided to the employee each pay period. This provision will not be enforced until November 30, 2020 if employers are "working in good faith on implementation."

5. Can employers still require documentation to support the employee's need to use ESSTA?

- Yes. Under ESSTA, an employer may request reasonable supporting documentation from an employee for any use of safe/sick leave use of more than three consecutive work days. Pursuant to the amendment, however, employers are now required to **reimburse employees** for reasonable fees, costs and expenses for obtaining supporting documentation from doctors or third parties as requested by their employer.

6. Does the amendment to ESSTA impact any existing employee rights or protections?

- Yes. The ESSTA amendment broadens anti-retaliation protections for employees by prohibiting "any adverse action" against an employee for exercising or attempting to exercise rights under ESSTA.
- Adverse actions include, but are not limited to, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of rights under this chapter, blacklisting, and maintenance or application of an absence control policy that counts protected leave for safe or sick time as an absence that may lead to or result in an adverse action. Adverse actions include actions related to perceived immigration status or work authorization.

7. What are the penalties for violations of ESSTA?

- An employer that willfully violates the notice requirements may be subject to a maximum civil penalty of \$50 for each employee who was not given notice.
- Fines for other employer violations include penalties ranging from \$500 to \$2,500. Civil penalties are capped at \$15,000 in a civil action “for a finding that an employer has engaged in a pattern or practice of violations.”

8. How does the amendment affect existing policies?

- No changes are required for employer policies that provide safe/sick time in more generous amounts than those required by ESSTA.

9. What steps should NYC employers take?

- Employers should revise their existing policies and practices to:
 - adjust accrual or frontloaded leave and carry over amounts, if needed;
 - include information about reimbursement for reasonable fees/costs/expenses incurred in connection with the company’s requests for medical documentation;
 - update anti-retaliation provisions;
 - confirm with payroll providers that safe and sick leave accrual, use, and balance information is included in paystubs; and
 - determine whether new Notices of Employee Rights should be issued.

The New York Department of Consumer and Worker Protection published an updated [FAQ](#) page on ESSTA on November 2, 2020.

[1] Westchester County also has a paid sick leave law that took effect on April 10, 2019, and a paid safe leave law that took effect on October 30, 2019.

[2] “Calendar year” means the 12 month period from January 1 to December 31. For other purposes, including use and accrual of leave, employers may set a calendar year to mean any 12-month period.

Related People

Gregory S. Lemmer
 PARTNER EMERITUS
 P +1 650 321 2400





Natalie A. Pierce
PARTNER
P +1 415 801 4920



Chelsea D. Raiten
OF COUNSEL
P +1 212 430 4245

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