

New York City Earned Sick Time Act

New York City has become the latest U.S. city to require paid sick leave for many local private sector employees. On May 8, 2013, the New York City Council passed the [Earned Sick Time Act](#) by a 45-3 vote. Mayor Bloomberg vetoed the bill on June 7, 2013, but the City Council overrode the veto on June 27.

Key provisions of the Act include:

- **Covered Employers**
Private sector employers with employees working in New York City are covered, except for manufacturing sector employers covered by NAICS Sections 31, 32, and 33. Employers with 20 or more employees are required to provide paid sick time, although this threshold could drop to 15 employees; other covered employers are required to provide unpaid sick time.
- **Accrual**
Employers must provide covered employees (those who work at least 80 hours in the calendar year) with one hour of sick leave for every 30 hours worked (i.e. as much as 8.75 days for an eight-hour/day, 40-hour/week employee). Employees can use up to 40 hours per calendar year. Sick leave must carry over from year-to-year, but remains subject to the 40-hour per year limit, or can be paid out at the end of the year. Accrued and unused sick leave need not be paid upon termination of employment. This requirement applies both to non-exempt and exempt employees, with exempt employees being presumed to work 40 hours/week, unless a lesser schedule is in effect. Accrual begins upon employment; usage may be delayed for up to 120 days.
- **Usage**
Employers may set a minimum usage amount per occurrence, but not more than four hours per day. Sick leave can be used for three purposes: the employee's own illness, injury, or health condition, including preventive care; the illness, injury, or health condition of a family member who needs care, including preventive care; or closure of businesses or schools due to a public health emergency. Family members are defined broadly to include child, spouse, domestic partner, parent, or the child or parent of an employee's spouse or domestic partner. Domestic partners

are those who have registered the partnership under New York law. Parents include biological, foster, step- or adoptive parents, as well as legal guardians of the employee or a person who stood *in loco parentis* to the employee as a minor child.

- **Existing Policies**

An employer with a paid leave policy – such as PTO, vacation, or personal days – that provides an employee with enough paid leave to meet the accrual requirements, and that allows such paid leave to be used "for the same purposes and under the same conditions as paid sick leave," is not required to provide additional paid sick time. This means that employers may need to amend their existing policies to mirror the "purposes" and "conditions" of the Act to avoid providing additional leave time.

- **Notice**

An employer may require reasonable notice of the need to use sick time, which means seven days in the case of foreseeable situations, and as soon as practicable in unforeseeable situations.

- **Documentation**

An employer may require reasonable documentation that sick time is authorized, which is limited to a document signed by a licensed health care provider indicating the need for the amount of sick time taken. The employer cannot require that such documentation state the nature of the injury, illness, or condition, unless otherwise required by law (e.g., FMLA medical certification).

- **Disciplinary Action**

The Act contains non-retaliation provisions for employees who take sick leave, which draws into question whether and how employers can enforce attendance policies, particularly no-fault policies. The Act provides that it shall not be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses sick time for purposes other than those permitted (i.e. abuse or misuse of sick time).

- **Collective Bargaining Agreements**

The Act does not apply to employees covered by a collective bargaining agreement if such provisions are expressly waived in the agreement, and the agreement provides for a "comparable benefit" in the form of paid

days off. A "comparable benefit" could take the form of leave, compensation, other employee benefits, or some combination thereof, including but not limited to vacation, personal time, sick time, and holiday and Sunday time pay at premium rates. In the case of employees covered by a valid collective bargaining agreement in effect on the Act's effective date, the Act takes effect on the expiration date of the collective bargaining agreement. The Act contains a broader exemption for bargaining unit employees in the construction and grocery industries. It also states that it shall not diminish or impair the rights of an employee or employer under any valid bargaining agreement.

- **Notice to Employees**

Upon commencement of employment, employees must receive notice of their rights under the Act. The content of these notices must include not only the substantive requirements for sick time, but also must address non-retaliation and the right to file an administrative complaint. Earlier versions of the bill had included a requirement that employers amend existing personnel policies to address the sick time requirements, but these were removed in the final bill; employers who have such policies nonetheless will want to amend them, if needed.

- **Recordkeeping & Confidentiality**

Employers are required to retain records documenting compliance with the Act. The Act provides that health information about an employee or his/her family member obtained for sick time use "shall be treated as confidential and shall not be disclosed except by the affected employee, with the permission of the affected employee, or as required by law." Notably, this confidentiality provision does not contain the exceptions that appear in the ADA's confidentiality provisions (e.g., supervisors and managers who can be told about work restrictions; first aid and safety personnel; insurance purposes; etc.).

- **Effective Date**

The Act is scheduled to take effect generally on April 1, 2014, although it could be delayed depending on the economic state of New York City, as reflected in Federal Reserve Bank indices referenced in the Act.