

February 27, 2014

### **New York City Council Expands Earned Sick Time Act, Accelerates Implementation Timeline**

On February 26, 2014, the New York City Council voted 46-5 to expand the coverage and requirements of the City's "Earned Sick Time Act" (the "Act"), and to eliminate the gradual implementation timeline defined by the 2013 enactment of the law.

**When Does the Act Take Effect?** The new law eliminates the progressive implementation schedule established by the 2013 enactment of the Earned Sick Time Act. All covered employers must now be in compliance with the new law on April 1, 2014. Employees currently covered by a valid collective bargaining agreement will be subject to the law upon the termination of the collective bargaining agreement.

**Who is Covered by the Act?** The Act requires all "employers" to provide sick time to covered "employees." The law uses the definition of "employer" and "employee" set forth in the state Labor Law, and includes narrow coverage exemptions for certain classes of employers and workers. Employees must work more than 80 hours in a calendar year to be covered by the act. Employees may still waive coverage under the law through a valid collective bargaining agreement, but in most cases must receive benefits comparable to those guaranteed by the Act.

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**What Does the Act Require?** The Act requires covered employers with five or more employees to offer paid sick time to their employees, while other covered employers must offer unpaid sick leave. Covered employers must provide each employee with up to 40 hours of sick leave per calendar year, based on the number of hours worked. Employees are generally entitled to earn such leave at a rate of one hour of leave for every 30 hours worked. Employers are not required to authorize the use of such leave until the later of 120 days after April 1, 2014 or the commencement of employment. Equivalent leave that can be used in the same manner, such as vacation days, can also satisfy this requirement. Employers are allowed to impose specified conditions on the use of such leave, but must generally permit employees to use sick leave to attend to their own or family members' health needs. The amended law expands the definition of "family member" to include siblings, grandchildren, and grandparents, in addition to spouses, domestic partners, parents, and children. Employers must provide employees with notice of their rights under the Act, and are subject to confidentiality requirements regarding employees' use of leave. The amendment also extends the recordkeeping requirements imposed by the law to three years.

**How Will the Act Be Implemented and Enforced?** The expanded Earned Sick Time Act now allows the Commissioner of the Department of Consumer Affairs (or another agency as designated by the Mayor) to initiate independent investigations regarding potential violations of the Act. Any person may file complaints alleging a violation of the law with the designated agency. The limitations period for submitting a complaint has been extended from 270 days to two years after the date the complainant knew or should have known of a violation. The agency may require an employer implicated by a complaint to

submit a written statement and relevant documentation, conduct investigations, hold public and private hearings, issue subpoenas, receive evidence, render decisions and orders, assess civil penalties, order equitable relief, and impose monetary damages specified by the statute, among other powers. The designated agency is also permitted to promulgate rules and regulations for the enforcement of the Act.

Specified monetary damages include, but are not limited to: the greater of triple back pay or \$250, where an employer wrongfully denies payment for leave taken; \$500 for each wrongful denial of leave or unlawful imposition of conditions on leave; \$500 and actual damages for unlawful retaliation; and \$2,500 and actual damages for a retaliatory termination. The agency may also impose civil penalties of up to \$500 for first time violations of the act, \$750 for second offenses, \$1,000 for subsequent offenses, and \$50 penalties for each failure to give an employee the notice required by the Act. Some employers, including those with 20 or fewer employees, will not be subject to civil penalties until October 1, 2014, but may be required to provide other remedies in accordance with the Act.

To avoid the various fines and penalties associated with noncompliance, employers are encouraged to begin reviewing their paid time off policies. If you have any questions or would like detailed information about the law, please contact Phil Repash at (212) 758-1078, Tina Grimshaw at (212) 758-7792, or any other attorney at the Firm.

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