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New York City Council Passes Act Mandating Granting of Sick Leave

The New York City Council recently passed the “Earned Sick Time Act” (the “Act”), which requires all employers to grant sick leave to employees – with some exceptions – who work more than 80 hours per calendar year on a full-time or part-time basis. Although a mayoral veto reportedly is expected, the City Council likely will be able to override a veto.

When will the law go into effect? Should the Act ultimately be enacted, it will go into effect under an intricate, staggered schedule based on the level of the NYC Coincident Economic Index, but beginning no earlier than April 1, 2014. For employees covered by a valid collective bargaining agreement (“CBA”) at the time the Act goes into effect, the Act will take effect on the date of termination of the CBA.

Is sick time paid or unpaid? Whether the statutory sick time is paid or unpaid depends on the size of the employer. The Act initially only requires employers with 20 or more employees to provide *paid* sick time to employees, and employers with 19 or less employees or a domestic worker to provide *unpaid* sick time. Eighteen months after the law goes into effect, the Act expands the paid sick time requirement to employers with 15 or more employees or one or more domestic worker.

How is sick time calculated and accrued? The amount of sick time (paid or unpaid) to which an employee is entitled is based on hours worked. Generally, for every 30 hours worked, an employee must receive at least one hour of sick time, up to a maximum of 40 hours per calendar year. For most employees, sick time begins to accrue on the later of: 1) the effective date of the Act, or 2) on the commencement of employment. Employees may begin using sick time 120 days after sick time begins to accrue.

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Can employees carry over unused sick time? With limited exceptions, unused sick time must be carried over to the following calendar year. If, however, the employer pays employees for unused sick time at the end of the calendar year and provides sick time the subsequent year that meets or exceeds the requirements of the Act, carry-over is not required. If an employee rolls over sick time, the employer may refuse to allow the employee to utilize more than 40 hours of sick time in a calendar year. It should be noted that the Act does not require an employer to pay out accrued, unused sick time upon an employee's separation from employment.

For what purposes can an employee use sick time? An employee may use sick time due to the employee's or a family member's mental or physical illness, injury, health condition, need for medical diagnosis, or need for preventative medical care. An employee may also utilize sick time in the event that the employee's business was closed due to a public health emergency, as declared by a public official, or if the employee needs to care for a child whose school or childcare provider was closed for such an emergency.

What can an employer require from an employee seeking to use sick time? Employers can set a reasonable minimum increment of sick time use, not to exceed four hours per day, and may require up to seven days' notice of the need to use sick time for a foreseeable need. If unforeseeable, notice must be given "as soon as practicable." If an employee is absent for more than three consecutive work days, an employer can require reasonable documentation, as prescribed in the Act. Should employees utilize the sick time provided in the Act for purposes other than those mandated, employers may take disciplinary action against the employees. However, retaliation, or the threat of retaliation, against employees for exercising or attempting to exercise their rights under the Act is prohibited.

Can employees "make up" sick time? Although employers cannot require employees to work additional hours to make up sick time, if both the employee and employer agree, an employee who is absent for sick leave may work additional hours during the immediately preceding seven days (if the absence was foreseeable) or within the immediately subsequent seven days to make up time. If these additional hours are insufficient to cover the entire absence, sick time will be applied to the difference. Similarly, employees may not be required, as a condition of taking sick time, to search for or find a replacement worker to cover the sick time.

Does the employer have to provide notice to employees about the Act? Upon commencement of employment, employers must provide employees with written notice of, among other things, the employee's right to sick time, the right to be free from retaliation, and the employee's ability to file a complaint with the Department of Consumer Affairs (the "Department"). Employers should provide the notices in English and the employee's primary spoken language (assuming an available translation on the Department's website). In most instances, employers must maintain records documenting compliance with this and other requirements of the Act for two years.

When does the Act not apply? Among other exceptions not discussed herein, if an employer already provides its employees with time off, vacation, personal days, or days of rest that meet the requirements of the Act and can be used for the same purposes and under the same conditions mandated by the Act, the employer need not provide additional sick time. Moreover, if employees are covered by a valid CBA that waives the provisions of the Act *and* provides for "comparable benefits" in the form of "paid days off" (as those terms are defined in the Act), then the Act does not apply. Importantly, however, nothing in the Act prevents an employer from adopting or retaining a more generous sick time policy than the Act requires.

How is the Act enforced? The Act provides that the Department will receive and investigate complaints of non-compliance. The Department can impose civil penalties and grant current or former employees appropriate relief, as detailed in the Act.

To avoid the various fines and penalties associated with non-compliance, employers are encouraged to begin reviewing their paid time off policies. If you have any questions or would like detailed information about the Act to ensure your business complies with this potential new law, please contact [Tina Grimshaw](#) at (212-758-7792) or any other attorney at the Firm.

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