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## **Four Years in the Making - New York Passes Earned Sick Leave Act**

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The New York City Council passed the controversial sick leave act, the Earned Sick Time Act (the Act), on June 26, 2013. The City Council overrode Mayor Michael Bloomberg's veto and passed the Act, granting employees in New York City up to 40 hours of paid sick leave per year. For employees not eligible for paid leave, the Act provides up to 40 hours of unpaid sick leave per year. The Act goes into effect on April 1, 2014, for employers with at least 20 employees, and coverage expands on October 1, 2015, to employers with at least 15 employees. New York joined Portland, San Francisco, Seattle and Washington D.C., in a growing trend toward providing paid leave to employees. The Act is projected to provide an estimated one million workers with up to five paid sick days annually.

### **Which Employers Are Covered?**

The Act applies to private employers with 20 or more employees as of April 1, 2014, and it will expand to employers with 15 or more employees as of October 1, 2015, and to employers of one or more domestic workers. The Act does not apply to public employers, including employees of the United States, New York State or New York City governments. Where the number of employees fluctuates above or below 20 persons per week over the course of a year, the business size will be determined for the current calendar year based upon the average number of persons who worked for compensation per week during the preceding calendar year. All persons performing work for compensation, whether on a full-time, part-time, or temporary basis, count toward determining coverage.

Employers with employees who are not entitled to paid sick leave must provide unpaid sick leave when the Act goes into effect. It is important to note that while accrued but unused sick leave may be carried over from year to year, an employee may only use 40 hours of leave per calendar year.

### **Which Employees Are Eligible for Coverage?**

Any person, with certain exceptions detailed below, employed within New York City for more than 80 hours in a calendar year and who performs work on a full-time or part-time basis is entitled to sick leave benefits under the Act. The Act also covers a broad category of absences, including the following:

- Absences due to the employee's own mental or physical illness, injury, or health condition;
- Absences due to the medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition or the need for preventive medical care for an employee or family member;



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- Closure of an employee's place of business or an employee's child's school or childcare provider due to a public health emergency.

### **What Are Employer Obligations?**

The Act permits employers to require reasonable notice and reasonable documentation in certain circumstances. However, employers must provide notice of entitlement to leave, and must describe the amount and terms of sick leave, including any right of employees to unpaid sick leave. The notice must also inform employees that the Act expressly prohibits retaliation for requesting or using sick leave, and that the employee has the right to file a complaint with the Department of Consumer Affairs.

Employers must provide the notice of sick leave benefits in English and the employee's primary language such as Chinese, Korean, Russian, Polish, Haitian-Creole, or Spanish.

### **Are there Exemptions and/or Exceptions?**

The Act exempts all small businesses, defined as those employing under 15 employees, from providing paid sick leave. Employers who have or who implemented a paid leave policy – including paid time off, paid vacation, and/or paid personal days—that provides for paid leave in an amount sufficient to meet the requirements of the Act (*i.e.*, one hour of paid sick leave for every 30 hours worked), and allow the leave to be used for the purposes and under the same conditions as required by the Act, are not required to provide additional paid sick leave.

Employees who are covered by a valid collective bargaining agreement on the effective date (either April 1, 2014, or October 1, 2015), the Act will not apply until termination of the collective bargaining agreement. However, the provisions of the Act may be expressly waived by the parties to the bona fide collective bargaining agreement provided that the agreement provides for comparable benefits in the form of paid time off, including vacation time, personal time, sick time and/or holiday pay.

### **What Are the Enforcement Mechanisms and Penalties?**

The sole recourse for an employee claiming a violation of the Act is to file a complaint with the Department of Consumer Affairs (“Department”) within 270 days of the alleged violation. There is no independent private right of action in either Federal or State courts.

The Department will investigate the complaint and may issue a civil penalty payable to New York City not to exceed \$500 for the first violation and a civil penalty not to exceed \$750 for a second violation, with subsequent violations subject to penalties up to \$1,000 per occurrence.



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For willful violations of the notice requirements, employers will be subject to a civil fine in an amount not to exceed \$50 for each employee who was not given appropriate notice. The Department also has the power to order appropriate damages be paid to the employee, including:

- each instance of sick leave taken by an employee but not compensated by the employer: three times the wages that should have been paid under the Act or \$250, whichever is greater;
- each instance of sick leave requested by an employee but unlawfully denied by the employer and not taken by the employee: \$500;
- each instance of retaliation not including discharge from employment: full compensation including, but not limited to, wages and benefits lost, \$500, and equitable relief as appropriate; and
- each instance of discharge from employment in violation of the Act: full compensation including, but not limited to, wages and benefits lost, \$2,500, and equitable relief as appropriate, including reinstatement.

#### Next Steps for Employers

Employers should immediately assess their compliance with the Act and ensure understanding of how the Act will impact and interact with their existing sick time and leave policies. If you have any questions about how the Act or other employment law and sick leave policies will affect your business, please contact **Dena B. Calo, Esq., Partner and Director of HR Practice Group** at (973) 533-0777 or [dcalo@genovaburns.com](mailto:dcalo@genovaburns.com).

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