

New York City Amends Safe and Sick Leave

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On September 28, 2020, Mayor Bill de Blasio signed into law amendments to New York City's Earned Safe and Sick Time Act ("ESSTA") to more closely align with the New York State Paid Sick Leave Law ("PSL"). The changes became effective September 30, 2020 and employers must inform employees about the new provisions by October 30, 2020. Notable highlights and changes to the ESSTA include:

- The amount of safe and sick time leave will now more closely mirror the PSL and is based on employer size. Any additional time to which employees may be entitled under these amendments does not need to be provided until January 1, 2021. The new accrual schedule is as follows:
 - 100 or more employees: Employees earn, may use and carry over 56 hours of paid safe and sick leave per year.
 - 5-99 employees: Employees may earn, use and carry over 40 hours of paid safe and sick leave per year.
 - 5 or less employees and net income of \$1 million in the prior calendar year: Employees earn, may use and carry over 40 hours of paid safe and sick leave per year.
 - Employers with 5 or less employees and net income less than \$1 million in the prior year: Employees earn, may use and carry over 40 hours of unpaid sick leave.
- Employees continue to accrue safe and sick leave at a rate of one (1) hour for every 30 hours worked.
- Employers may limit the available safe and sick time to 40 or 56 hours (depending on the annual accrual) per year.
- New hires will be eligible for safe and sick time leave much sooner as the optional 120-day waiting period has been eliminated.
- Employees will no longer need to work 80 hours in a calendar year before being able to take safe and sick time leave in a calendar year.
- Leave under the ESSTA may now be taken for domestic violence situations.
- Employees must be paid their regular rate of pay or the appropriate minimum wage if greater.
- Employers must provide an accounting each pay period showing the amount of safe and sick time accrued and used by the employee during the pay period, as well as the employee's total balance of safe and sick time.
- Where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the City may initiate a civil action and impose penalties of up to \$15,000 with an additional award of up to \$500 to each employee covered by an employer's official or unofficial policy or practice of not providing, or refusing to allow the use of, safe and sick time.

■ Employer Action

New York City employers should become familiar with the new requirements, ensure the payroll provider is able to provide the required sick and safe leave accounting with each pay period, and consult with employment counsel to ensure compliance with the amended law.

Employers must inform current employees about the required changes by October 30, 2020, must conspicuously post the new notice, and provide new hires with a statement of rights upon hire. The notice is to be provided in English or the employee's primary language if a translation has been made available by the City. The City is expected to update its model ESSTA notice to incorporate the new provisions. The notice can be found at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>

