

AMENDMENTS TO THE NEW YORK CITY EARNED SAFE AND SICK TIME ACT

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Not to be outdone by Governor Cuomo and the State of New York, on September 28, 2020, Mayor Bill de Blasio signed into law amendments to the New York City Earned Safe and Sick Time Act (the “ESSTA”), which were ostensibly meant to align with many of the requirements of the recently enacted [New York State sick leave law]¹ (the “NYS Law”). However, the ESSTA amendments go above and beyond the requirements of the NYS Law and impose new important requirements upon NYC employers, including an obligation to provide employees with a written notice of their accrued and used amounts of sick leave each pay period. Both the NYS Law and the ESSTA amendments take effect on September 30, 2020.

The following is a brief overview of noteworthy amendments to the ESSTA:

- Consistent with the NYS Law, the amount of safe/sick time employees are eligible to accrue (at least at the rate of 1 hour of safe/sick time for every 30 hours worked) and whether it is paid or unpaid, is determined as follows:
 - Employers with 4 or fewer employees and a net income of less than \$1 million in the previous tax year must provide employees with at least 40 hours of unpaid safe/sick time per calendar year.
 - Employers with 4 or fewer employees and a net income of greater than \$1 million in the previous tax year; employers with 1 or more domestic workers; and employers with between 5 and 99 employees must provide employees with at least 40 hours of paid safe/sick time per calendar year.
 - Employers with 100 or more employees must provide employees with at least 56 hours of paid safe/sick time per calendar year.
- Employees no longer need to work more than 80 hours in a calendar year within New York City to be eligible to accrue safe/sick time under the ESSTA.
- Employees may now use paid safe/sick time as it is accrued (beginning January 1, 2021), which is consistent with the provisions of the NYS Law. Previously, the ESSTA allowed employees to begin using accrued safe/sick time on the 120th calendar day following commencement of the employee’s employment – such 120-day waiting period has been eliminated.
- Importantly, the amount of safe/sick time accrued and used during a pay period and an employee’s total balance of accrued safe/sick time must be noted on the employee’s pay stub or in some other written form provided to the employee each pay period. Given the September 30, 2020 effective date, there does not appear to be any specific grace

¹ NOTE: Include hyperlink to recent NYSA Counsel’s Corner on NYS paid sick leave law.

period for employers to come into compliance with this notice requirement. The NYS Law does not require such a notice be provided to employees each pay period, but it does require employers to provide a summary of the amounts of sick leave accrued and used by the employee in the current calendar year and/or any previous calendar year within 3 business days of an employee's request for such information.

- If an employer requires an employee to produce documentation substantiating the employee's absence of more than 3 consecutive work days for sick or safe time (as the employer is permitted to do under the ESSTA), and the employee incurs a fee or expense for obtaining such documentation (such as from a health care provider), the employer must reimburse the employee for such fee. The NYS Law is currently silent on an employer's right to request reasonable documentation from an employee to substantiate the employee's need for leave.
- The written notice of an employee's rights under the ESSTA must now be provided to employees at the commencement of employment and the notice must be conspicuously posted at the employer's place of business in an area accessible by employees. Previously, the ESSTA only required that the notice be provided to employees. For staffing firms employing temporary workers who do not visit the staffing firm's place of business, NYSA recommends sending employees the notice electronically, such as by email, and making the notice readily available to employees electronically, such as via the staffing firm's intranet or a portal or other electronic link where notices, policies, and other documents are available to employees. Staffing firms should also maintain a means of tracking that the notice was sent to employees such that the staffing firm has records of its compliance with the notice distribution requirement.
- The ESSTA amendments also increased the penalties that may be assessed against employers for violations of the law and granted authority to the NYC Corporation Counsel (or such persons designated by the Corporation Counsel) to, among other things, bring civil actions against employers for non-compliance with the ESSTA and initiate investigations to ascertain any facts necessary to bring civil actions.

With the ESSTA amendments and the NYS Law each taking effect on September 30, 2020, New York City staffing and direct hire firms and other employers will need to act promptly to update their policies and practices to ensure compliance with both laws, including the differences between such laws, and work with their payroll companies to ensure that, in accordance with the ESSTA amendments, the amount of safe/sick time accrued and used during a pay period and an employee's balance of accrued safe/sick time is noted on each employee's pay stub or otherwise provided to employees in writing each pay period.

As discussed in our prior [\[article regarding the NYS Law\]](#)², staffing firms should consider immediately having constructive conversations with their clients regarding how the costs of these new safe and sick time mandates might be shared or allocated.

² NOTE: Include hyperlink to recent NYSA Counsel's Corner on NYS paid sick leave law.

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