

Increased Exposure to Businesses under the New York City Sick Leave Law

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Effective March 20, 2024, employees in New York City (“NYC”) will have a private right of action to directly sue their employers for alleged violations of their rights under the NYC Earned Safe and Sick Time Act (“ESSTA”).

By way of background, effective in 2014, NYC was one of the first cities in the United States to require 40 hours of paid sick leave on an annual basis, subject to numerous terms and conditions and various amendments over the years. Several years later in 2020, New York State enacted a state-wide paid sick leave law which primarily differed from the NYC requirements by requiring large employers to provide 56 hours of paid leave annually. Thereafter, NYC amended its requirements to align with the New York State requirement for large employers to provide 56 hours of paid leave, although there remain some differences between the two laws.

Under ESSTA, most NYC employers are currently required to provide their employees with paid sick leave on an annual basis. An employer may determine whether such leave is to be accrued on an hourly basis of at least 1 hour for every 30 hours worked or “front-loaded” at the beginning of each calendar year.¹ Covered employees have the right to use safe and sick leave for the care and treatment of themselves or a family member. Other authorized uses of sick time under ESSTA include seeking legal assistance, social services assistance, or taking other safety measures if the employee or a family member may be the victim of domestic violence – or unwanted sexual contact, stalking, or human trafficking. Specifically, employers:

- with 4 or fewer employees and a net income of less than \$1 million must provide up to 40 hours of unpaid leave each calendar year
- with 5 or more employees; with 1 or more domestic workers; and with 4 or fewer employees that had a net income of \$1 million or more during the previous tax year, must provide up to 40 hours of paid leave each calendar year.
- with 100 or more employees must provide up to 56 hours of paid leave each calendar year.

Notably, the above employee headcounts include all full and part-time employees nationwide. There are detailed rules regarding which employees are eligible for ESSTA safe and sick time. Generally, employees physically working in NYC are covered, and remote employees of NYC-based employers who work exclusively outside of NYC are not covered. Additionally, employees performing work in NYC may be covered, regardless of where the employer is located.

Previously, the only recourse for an alleged violation was for an employee to file a complaint with the NYC Department of Consumer and Worker Protection (“DCWP”) within two years of the date they knew or should have known of a violation of the Act.

Starting on March 20, 2024, with this new amendment to ESSTA, employees gain the ability to file a lawsuit in any court of competent jurisdiction for an alleged violation, in addition to maintaining the option to file a complaint with the DCWP. The statute of limitations for such a lawsuit is two years. Previously, the available remedies included civil penalties and lost wages and benefits. The amendment to ESSTA expands those remedies to include compensatory damages, injunctive and declaratory relief, attorney’s fees and costs, and such other relief as such court deems appropriate.

This amendment to ESSTA creates a new risk of litigation for employers from employees for “sick and safe” leave violations. Businesses should review their leave policies and relevant handbook policies to ensure they are compliant with the amended law, as well as the existing NYC and New York State requirements. Given that the requirements are very detailed, and with the new risk of litigation, employers based in NYC and/or employers with NYC workers are urged to seek guidance to ensure compliance.

Footnotes

[1] “Calendar year” shall mean a regular and consecutive twelve-month period, as determined by the employer. NYC Administrative Code § 20-912.

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