

New York's Paid Prenatal Leave: What NYC Employers Need to Know About the DCWP's Proposed Amendments to the ESSTA Rules

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On January 6, 2025, in the wake of the issuance of [guidance](#) by the New York State Department of Labor (NYSDOL) about the New York State [Paid Prenatal Leave Law](#), which came into effect on January 1, 2025, the New York City Department of Consumer and Worker Protection (DCWP) proposed [amendments to the rules](#) related to New York City's Earned Safe and Sick Time Act (ESSTA) to incorporate the state's [paid prenatal leave law requirements](#).

Quick Hits

- New York State's paid prenatal leave law, which went into effect on January 1, 2025, requires that employers provide employees twenty hours of paid leave per year to receive prenatal care.
- The NYSDOL recently released new guidance in the form of answers to [frequently asked questions](#) (FAQs) to assist employers in understanding and implementing the new requirements under the [Paid Prenatal Leave Law](#).
- In part, the DCWP's proposed amended rules are consistent with the paid prenatal leave law, but if adopted, certain provisions would impose additional requirements that exceed what is otherwise required under the state law.

Overview of the Proposed Rules

Notable provisions of the proposed rules include sections:

- requiring employers to maintain and distribute a written policy addressing paid prenatal leave that meets or exceeds all of the requirements of the ESSTA;
- authorizing employers to require reasonable written documentation that the use of paid prenatal leave was for purposes authorized by law if the use of such leave results in an absence of more than three consecutive days, and as with the ESSTA, specifying that an employer shall not withhold payment of paid prenatal leave when the required documentation

is unattainable by the employee due to associated costs;

- requiring the inclusion of information about the amount of paid prenatal leave used and the balance of available paid prenatal leave available for use on pay statements or by electronic means;
- providing that upon mutual consent of employer and employee, the employee's schedule may be changed instead of using paid prenatal leave, and specifying that employers shall not require an employee to work additional hours to make up for time used for paid prenatal leave or search for or find a replacement employee to cover hours during which the employee uses paid prenatal leave; and
- specifying that the penalties that may be imposed by the DCWP for violation of the paid prenatal leave requirements include but are not limited to the full amount of any underpayment of wages owed and interest, liquidated damages of up to 100 percent of the total amount of wages found to be due and, for prohibited retaliation, liquidated damages of up to \$20,000, reinstatement or front pay in lieu of reinstatement, lost wages, and injunctive relief.

Next Steps

A public hearing is scheduled for February 14, 2025, and interested parties may provide feedback during the comment period, which ends on the same day.

Employers with employees in New York City may want to review the proposed rules to determine what additional obligations they may face if the rules are adopted in substantially the same form as currently proposed.

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