

Share NYC Expands Sick Time Act to Offer Safe Time to Victims of Sexual Abuse, Stalking, and Human Trafficking

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On November 6, 2017, Mayor de Blasio signed New York City Council legislation [Int. 1313-2016](#) (also referred to as Int. 1313-A or the Earned Safe and Sick Time Act) into law, expanding the [New York City Earned Sick Time Act](#). The new law will allow employees to take “safe” time related to family offense matters, sexual abuse, stalking, and human trafficking. The new law is set to take effect on or about Monday, May 7, 2018.

[The New York City Earned Sick Time Act](#), which took effect on April 1, 2014, requires that New York City employers with 5 or more employees provide up to 40 hours of paid sick time to eligible employees in a calendar year. Employers with fewer than five employees must provide the equivalent of unpaid leave. While the safe time expansion does not expand the number of hours an employer is required to provide to employees, it significantly expands the permissible uses for safe/sick time.

Under the new law, employees will be permitted to take safe time if they are victims of a family offense matter, sexual offense, stalking, or human trafficking, or if a family member has been a victim of such crimes, in the following circumstances:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee’s family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;

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5. to meet with a district attorney's office;
 6. to enroll children in a new school; or
 7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee."

The new law is broad and protective; for example, "family offense matters" include acts or threats of disorderly conduct, harassment or sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or blood circulation, assault, attempted assault, identity theft, grand larceny, or coercion. And the law's definition of "human trafficking" includes an act or threat of an act that may constitute sex trafficking or labor trafficking. Employers must pay particular attention to the definitions of "family offense matters," "human trafficking," "sexual offense," and "stalking," which are all tied to the New York Penal Law.

The new law also expands the definition of "family member," for both safe and sick time, to include "any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship."

Like the New York City Earned Sick Time Act, the Earned Safe and Sick Time Act requires employers to provide notice to employees of their rights under the law. Following the effective date, new employees must receive a notice of employee rights for safe and sick time and current employees must be provided with notice of their right to safe time within 30 days of the effective date.

The law also addresses what information an employer is permitted to request of an employee using safe time. For an absence of more than three consecutive work days for safe time, "an employer may require reasonable documentation that the use of safe time was authorized." Reasonable documentation reflecting the need for safe time includes "documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such time." An employer cannot require "details of the family offense matter, sexual offense, stalking, or human trafficking."

Significantly, the law expands the confidentiality provisions of the sick time act, prohibiting employers from requiring "the disclosure of details relating to an employee's or his or her family member's . . . status as a victim of family offenses, sexual offenses, stalking, or human trafficking" as a condition of providing safe time. Employers must keep confidential any information concerning an employee's or his or her family member's status or perceived status as a victim of family offenses, sexual offenses, stalking or human trafficking permissibly obtained in accordance with the law.

New York City employers may want to review and revise their sick time policies to include safe time. Employers can implement necessary administrative functions to ensure compliance with the expanded scope of the law and its notice and recordkeeping requirements. Additionally, employers may want to keep in mind that, at the commencement of employment, employees must be provided with written notice of their entitlement to safe and sick time, and the notice must provide information

relating to accrual, use of safe and sick time, the employer's calendar year, and the right to be free from retaliation.

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