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New York City Updates FAQs and Amends Rules for Earned Safe and Sick Time Act

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The Earned Safe and Sick Time Act (ESSTA) was amended by New York City earlier this year to allow employees to use leave time required by the law for “safe time” and to expand the definition of a “family member” on whose behalf an employee may use safe or sick time. (See our alerts on [May 17](#) and [Nov. 10.](#))

Now, the New York City Department of Consumer Affairs, the agency charged with enforcing ESSTA, has updated its [FAQs](#) and issued [Amended Rules](#) to address these changes to the law. In doing so, the DCA also added additional requirements for employer leave policies.

ESSTA Policy Requirements

In the Amended Rules, the DCA expands on the requirement that all New York City employers maintain a written ESSTA policy. The Amended Rules clearly state that relying on the DCA’s published Notice of Employee Rights that must be provided to all new employees in New York City is insufficient to meet the requirements for a written policy. Rather, employers must “maintain written safe time and sick time policies in a single writing” that meets certain minimum requirements.

Neither the Amended Rules, nor the FAQs, provide an explanation as to what it means to maintain an ESSTA policy “in a single writing.” Employers with employees both inside and outside of New York City who have used an addendum to their general leave policies to meet the requirements of ESSTA should consider reorganizing their policies such that any such addendum is at a minimum attached to the general leave policy or included in the same section in an employee handbook to avoid running afoul of this new “single writing” requirement.

The minimum requirements for a written safe and sick time policy established by the Amended Rules include:

The employer’s method of calculating safe time and sick time:

- If an employer “frontloads” safe and sick time so that an employee receives all of their time at the beginning of the year, the employer’s policy must specify the amount of frontloaded safe time and sick time to be provided;
- If the employer does not frontload safe time and sick time, then the policy must specify when accrual of leave time starts, the rate at which an employee accrues leave time, and the maximum number of hours an employee may accrue in a calendar year;

The employer’s policies regarding the use of safe time and sick time, including any limitations or conditions on the use of safe time and sick time, such as:

- Any requirement that an employee provide notice of a need to use safe time and sick time and the procedures for doing so;
- Any requirement for written documentation or verification of the use of safe time and sick time, and the employer’s policy regarding any consequences of an employee’s failure or delay in providing such documentation or verification;

- Any reasonable minimum increment or fixed period for the use of accrued safe time and sick time;
- Any policy on discipline for employee misuse of safe time and sick time; and
- A description of the confidentiality requirements of the law, which are:
 - Employers may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require 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/sick time; and
 - Health information about an employee or an employee's family member, and information concerning an employee's or a family member's status or perceived status as a victim of family offenses, sexual offenses, stalking, or human trafficking obtained solely for the purposes of utilizing safe/sick time shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law.
- The employer's policy regarding carry-over of unused safe time and sick time at the end of an employer's calendar year.
- If an employer uses a term for leave other than "safe/sick time" or "safe and sick time" such as "Paid Time Off" to describe leave provided to meet the requirements of ESSTA, the employer's policy must state that such leave may be used by an employee for any of the purposes set forth in ESSTA without any condition prohibited by ESSTA.

Employers are reminded that under ESSTA, they are forbidden from asking for a doctor's note or similar

document from an employee who has taken ESSTA unless the employee has been out for more than three (3) consecutive work days.

The Amended Rules require that this written policy be provided to all employees – posting it in the workplace alone is not sufficient. The policy must be distributed to employees (a) upon commencement of employment; (b) within fourteen days of the effective date of any change to the policy; and (c) upon request by an employee.

New York City employers are advised to review their employee handbooks and policies regarding paid time away from work to ensure that they are in compliance with these requirements.

Use of Safe Time

"Safe time" under ESSTA provides employees with the right to use accrued leave for the care or treatment of themselves or a family member and to seek assistance or take other safety measures if the employee or a family member may be the victim of any act or threat of domestic violence, unwanted sexual contact, stalking, or human trafficking. The ESSTA FAQs has been updated by DCA to provide examples of situations where DCA believes safe time would or would not be appropriate.

For example, DCA believes that the use of safe time would be appropriate in the following situation:

Someone from Ruby's neighborhood has been following her. Recently, someone broke into her apartment while she and her 10-year-old son were out. No one was physically harmed, but Ruby suspects that it was the person who has been following her and she doesn't feel safe staying in her neighborhood anymore. She has decided to move in with her mom in another school district. Ruby needs to take a day off from work to enroll her son in his new school and to move their belongings to storage and her mom's apartment.

According to the FAQs, safe time would *not* be appropriate in the following scenario:

Warren was mugged one early Sunday morning, a workday, after dropping off his partner at the airport. He needs to take a couple of hours off to go to the police station to identify suspects.

However, in the example above, Warren may be entitled to leave under state law as a crime victim. Further, employers should be careful, however, when denying an employee the use of leave in these circumstances. Should the employee express that he or she feels “anxious” or “distressed” because of the mugging, that alone may be sufficient to qualify as a proper use of sick time under ESSTA.

Expanded Definition of Family Member

The definition of a “family member” on whose behalf an employer could use leave under ESSTA was significantly expanded under the recent amendments of the law. “Family member” now includes “any individual whose close association with the employee is the equivalent of family.” The revised FAQs indicate that the DCA intends to take a broad view of who a “family member” is under ESSTA. The following example is provided in the FAQs as a relationship DCA finds to be “equivalent of family” under the law:

Luis moved to New York from Puerto Rico 20 years ago. His grandmother’s friend, Mariana, has always treated him like family, having him over for dinner every Sunday and during holidays and helping to care for Luis’s children. Luis has always referred to her as his “second grandmother” and frequently accompanies her to doctors’ appointments.

According to DCA, this employee may use sick time under ESSTA to accompany his “second grandmother” to her appointments. Given the breadth of the definition of “family member” as stated in the law and as DCA has interpreted it in the FAQs, employers should be cautious in challenging an employee’s use of time under ESSTA to care for someone the employee claims is a family member.

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