



October 2020

## NYC Employers: Act Now to Comply with New Sick Leave Requirements

By Bryn Goodman

While paid sick leave is novel for employers in most of New York State, New York City employers are familiar with paid sick leave requirements. Nonetheless, New York City employers will need to revise their existing policies to reflect amendments to New York City's Earned Safe and Sick Time Act (ESSTA) and the recently enacted New York State Sick Leave Law.

Below is a summary of the new requirements for New York City employers under New York City's ESSTA and the New York State Sick Leave Law. Employers located in New York City will need to ensure compliance with both laws when revising their policies in consultation with counsel.

Change	New City Requirements	State Requirements
<b>Amount of Sick Leave Increased</b>	<p>Employers with four or fewer employees and net income of less than \$1 million must provide 40 hours of <i>unpaid</i> sick leave each calendar year.</p> <p>Employers with four or fewer employees and net income greater than \$1 million or 5-99 employees irrespective of net income, must provide 40 hours of <i>paid</i> sick leave each calendar year.</p> <p>Employers with 100 or more employees must provide 56 hours of <i>paid</i> sick leave each calendar year.</p>	Same
<b>Waiting Period Eliminated</b>	The 120-day waiting period for new employees to use sick leave has been eliminated. Most employees may immediately use safe and sick leave as it is accrued. However, employees of employers who are subject to new requirements ( <i>i.e.</i> , employees of employers with four or fewer employees and a net income of more than \$1 million and for hours over 40 for employees of employers with more than 100 employees) will not be able to use their new paid sick leave or additional sick leave until January 1, 2021. After January 1, 2021, these employees will not be subject to a waiting period.	Employees may begin to use sick leave as soon as it is accrued after January 1, 2021.
<b>Carryover Amount Increased and Required</b>	Previously, employers could cap carryover at 40 hours annually, but now the carryover cap matches the amount of maximum sick leave time provided as noted above ( <i>i.e.</i> , 56 hours for large employers). If an employer frontloads the	Employers must allow employees to carry over all accrued unused sick time, with no cap.

	<p>maximum amount of sick leave, it is not required to allow carryover.</p>	<p>Currently, there is no exception to the carryover requirement for policies that frontload sick leave.</p>
<p><b>Usage Cap Increased for Large Employers</b></p>	<p>An employer with fewer than 100 employees may set a usage cap at 40 hours per calendar year.</p> <p>An employer with 100 or more employees may set a usage cap at 56 hours per calendar year.</p>	<p>Same</p>
<p><b>Doctor's Note Requires Reimbursement</b></p>	<p>Employers may request a doctor's note from an employee after three consecutive workdays of leave (on the fourth day), but there is a new requirement that the employer must reimburse the employee for the cost (if any) of such documentation.</p>	<p>State law is silent on the right of an employer to request a doctor's note, but the law prohibits an employer from compelling the employee to disclose any confidential health or domestic violence-related information.</p>
<p><b>Pay Statements Must Include Sick Leave Information</b></p>	<p>Employers must include information regarding sick leave on their employees' pay stubs (or another document issued each pay period). The pay statement must include (1) the amount of accrued and used leave and (2) the total balance of accrued leave.</p> <p><u>Employers will have until November 30, 2020 to ensure compliance without a penalty.</u></p> <p>Whether this requirement is enforceable or exceeds the City's authority is unclear at this time.</p>	<p>Employers must include the amount of sick leave provided on all employees' pay statements.</p>
<p><b>Responding to Requests for Sick Leave Hours Balance</b></p>	<p>City law does not include a time frame for how quickly employers need to respond to employees' requests for their sick leave hours' balance.</p>	<p>Employers must provide employees with a summary of the amounts of sick leave accrued and used by the employee within three business days of the employee's oral or written request for such information.</p>
<p><b>Distributing New Notice of Rights</b></p>	<p>Employers with 100 or more employees and employers of domestic workers are required to distribute and conspicuously post an updated employees' notice of rights. Such notice must be distributed and posted <u>by January 1, 2021</u>, or at the commencement of employment, whichever</p>	<p>No similar requirement.</p>

	<p>is later. No new notices have been published by the New York City Department of Consumer Affairs (DCA).</p> <p>Such notice must be in English and the primary language spoken by that employee (if the translation has been provided by the New York City Department of Consumer Affairs).</p>	
<p><b>Minimum Increment Will Track NY State Law</b></p>	<p>The current minimum increment of leave of four hours provided by an employer has not changed. The amended City law provides, however, that if the state law sets forth a standard or requirement for minimum hours or use of safe/sick time that exceeds any provision of City law, than the State standard will be incorporated by reference into City law.</p>	<p>Minimum increment currently four hours.</p>

When consulting with counsel to revise their policies, New York City employers should remove any waiting period and consider changes to the accrual, use and carryover requirements of the amended ESSTA and New York State Sick Leave Law. Furthermore, employers should revise their policies regarding requests for medical documentation and reimbursement for such documentation, issue notice of changes to the law and their policies, and monitor the DCA for the posting of a revised Notice of Employee Rights. Finally, employers should contact payroll providers about including both accrual and use of safe and sick leave on employee pay stubs by November 30, 2020.

For more information about this alert, please contact Carolyn D. Richmond at [crichmond@foxrothschild.com](mailto:crichmond@foxrothschild.com) or 212.878.7983, Glenn S. Grindlinger at [ggrindlinger@foxrothschild.com](mailto:ggrindlinger@foxrothschild.com) or 212.905.2305, or Bryn Goodman at [bgoodman@foxrothschild.com](mailto:bgoodman@foxrothschild.com) or 212.878.7975, or any member of the firm's New York Labor & Employment Group.