

March 2014

EMPLOYER ALERT

NEW YORK CITY EMPLOYERS MUST PROVIDE PAID SICK LEAVE TO EMPLOYEES EFFECTIVE APRIL 1, 2014

The New York City Earned Sick Time Act (the "Act"), which takes effect on April 1, 2014, requires employers of five or more employees (or one or more domestic worker) working in New York City for more than 80 hours in a calendar year to provide such employees with paid sick time off: (1) for the employee's own mental or physical illness, injury or health condition; (2) to care for a sick family member (including parents, spouses, children, siblings, grandparents and grandchildren); or (3) to care for a child whose school or childcare provider has been closed due to a public health emergency. Under the Act, employers with less than five employees working in NYC must offer such employees unpaid sick time off.

The Act's Requirements:

Under the Act, paid sick leave begins to accrue on an employee's date of hire (or April 1, 2014, whichever date is later) at a rate of one hour for every 30 hours worked, up to a maximum of 40 hours of paid sick time in a calendar year. An employee may begin using accrued sick time under the Act starting on July 30, 2014 or 120 days after her/his date of hire (whichever date is later). Employers may require the sick time to be taken in minimum increments of 4 hours at a time and that employees provide reasonable notice (up to seven days) of foreseeable sick time and provide reasonable documentation justifying absences of three or more consecutive workdays.

Employees (other than domestic workers) who do not use all their accrued sick time in a calendar year may carry unused time to the following year (e.g., start with time "in the bank" without having to first accrue it during that year), but an employer may limit the amount of sick time actually used in a calendar year to 40 total, regardless of the amount of "banked" time from a previous year. Employers are not required to pay out unused accrued sick time at the end of a calendar year or upon termination of employment.

For employers of domestic workers working in New York City, the Act supplements New York State's existing Domestic Workers' Bill of Rights (which requires three days of paid leave for all domestic workers employed for more than one year) to require an additional two paid sick days (for a total of five paid sick days) effective October 1, 2015 (employers must provide these two additional sick days on an unpaid basis effective April 1, 2014).

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Compliance With The Act:

Importantly, while the Act requires a minimum amount of paid sick time to covered employees, it specifically does not require an employer who already provides employees with paid time off (whether characterized as sick time, vacation days, personal days or otherwise) to provide additional paid sick time, so long as the employer's policy allows such paid leave to be used for the same purposes and under the same conditions as required by the Act. In other words, an employer will comply with the Act if its existing leave policy already provides employees covered by the Act with five or more days of paid time off that may be used for purposes consistent with the Act. Additionally, the Act does not apply to unionized employees covered by a collective bargaining agreement ("CBA"), provided the provisions of the CBA expressly waives the requirements of the Act and contains comparable leave benefits.

Employers must provide a written notice (in English and in an employee's primary language) to employees at their time of hire of their rights under the Act, including an explanation of how sick time is accrued, how it can be used, the right to be free from retaliation and to file a complaint to the Department of Consumer Affairs for violations of the Act. Employers who fail to provide such notice are subject to a \$50 fine per employee.

We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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