

One Minute Memo[®]



New York City Council Passes Legislation Requiring Paid Sick Days

On May 8, 2013, the New York City Council overwhelmingly passed legislation that would require private employers to provide paid sick leave to an estimated 1 million workers in New York City. The Earned Sick Time Act also requires employers to provide unpaid sick time to another roughly 300,000 workers, meaning that those employees could not be fired for taking time off work to care for themselves or an ill family member. Although Mayor Bloomberg has vowed a veto, the City Council's 45-3 vote provides more than the two-thirds majority required to override a veto.

The law would take effect on April 1, 2014, when employees of businesses with 20 or more workers in New York City will be eligible to earn up to 40 hours of paid sick time a year. Beginning on October 1, 2015, workers in businesses with 15 or more employees will be eligible for the benefit. Private sector workers in smaller businesses will receive job protection for up to 40 hours of unpaid sick time a year. The law only considers workers "employed for hire within the city of New York" for purposes of determining a business's size. Employees would need to work at least four months before being eligible for paid time off, and the law excludes work-study students and seasonal employees. The law applies to both full-time and part-time employees, and workers eligible for paid sick time would accrue one hour of sick time for every thirty hours worked.

Employees may miss work because of illness or to care for an ill family member. The law would also prevent all employers from retaliating against employees who take sick leave.

The law would not permit an employee who claims that he or she was denied sick leave to sue in court. Rather, the employee would have to file a complaint with the Department of Consumer Affairs, which would determine whether a violation occurred and may impose civil penalties and order equitable relief. Employers may be subject to civil penalties up to \$500 for the first violation, rising to a maximum of \$1,000 for successive violations. Once the Commissioner of Consumer Affairs conducts a proceeding and makes a determination, the affected individual could then bring an action in court, but only to contest the agency's decision.

The legislation includes a "reverse trigger" that would delay the law from going into effect if the City's economy unexpectedly worsens.

The law permits employers to require reasonable documentation for sick leave that lasts more than three consecutive work days. Employers with a paid leave policy, such as a PTO policy, would not be required to provide additional paid sick time if the paid leave met the requirements of the proposed law.

The legislation would require that employers provide notice to employees regarding their right to sick time pursuant to the law and that employers retain records for two years documenting the number of hours worked by employees and the amount of sick time accrued and used. If current records do not capture and retain this type of information, employers will need to change their policies to come into compliance. Employers with PTO policies should also ensure that these policies meet the minimum requirements of the law.

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