

Management Alert



If Pain, Yes Gain—Part XLVII: New York and New Jersey Paid Sick Leave in Full Bloom

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Seyfarth Synopsis: As New York City's amended paid sick leave ordinance, now called the Earned Safe and Sick Time Act, went into effect on May 5, just days earlier New Jersey officially became home to the tenth statewide paid sick leave law in the nation. Elsewhere in New York, Westchester and Albany counties have taken steps toward passing local paid sick leave ordinances.

Spring is in full bloom and so is paid sick leave in New York and New Jersey. Here's the latest:

(1) New Jersey

On May 2, 2018, Governor Phil Murphy signed into law the New Jersey Paid Sick Leave Act ("NJ PSL"), making New Jersey the tenth state with a paid sick leave law.¹ The New Jersey Assembly passed the NJ PSL bill on March 26, 2018 and the Senate followed suit on April 12, 2018. The NJ PSL law goes into effect on the 180th day following enactment, i.e., October 29, 2018. At that time, the NJ PSL law will preempt the state's 13 existing and any future municipal paid sick leave ordinances.²

The NJ PSL law will require covered employers to allow eligible employees to accrue paid sick leave at least as fast as one hour of sick leave for every 30 hours worked, up to 40 hours per year. Employers will not be required to permit employees to use more than 40 hours of paid sick leave in any benefit year or carry over more than 40 hours of unused sick leave to the following benefit year. Although employers may frontload 40 hours of sick leave on the first day of the benefit year, instead of allowing employees to accrue the leave, the law does not allow employers to adopt a "use it or lose it" approach. If an employer chooses to frontload sick leave, it must either **(1)** pay the employee for the full amount of unused earned sick leave in the final month of the benefit year, or **(2)** permit the employee to carry over unused sick leave to the next benefit year.

For more information on the New Jersey PSL law's substantive requirements, please see our prior alerts [here](#) and [here](#).

1. The nine states that have passed a statewide mandatory paid sick leave law are: (1) [Connecticut](#); (2) [California](#); (3) [Massachusetts](#); (4) [Oregon](#); (5) [Vermont](#); (6) [Arizona](#); (7) [Washington](#); (8) [Rhode Island](#); and (9) [Maryland](#). The Rhode Island governor signed the state's paid sick leave law on September 28, 2017 and it is scheduled to go into effect on July 1, 2018. The Washington statewide paid sick leave law went into effect on January 1, 2018. The Maryland statewide paid sick leave law went into effect on February 11, 2018. The other six statewide laws are in effect.

2. The New Jersey municipal paid sick leave ordinances that will be preempted when the NJ PSL law goes into effect are: (1) Newark; (2) Passaic; (3) East Orange; (4) Paterson; (5) Irvington; (6) Montclair; (7) Trenton; (8) Bloomfield; (9) Jersey City; (10) Morristown; (11) Plainfield; (12) Elizabeth; and (13) New Brunswick.

(2) New York

(A) New York City

New York City's paid sick leave ordinance has been in effect since April 2014. The ordinance, as amended, is now called the Earned Safe and Sick Time Act ("ESSTA"), and became effective on May 5, 2018. Among other developments, ESSTA allows eligible employees to use paid leave for certain absences where the employee or his/her covered family member is a victim of a family offense matter, sexual offense, stalking, or human trafficking. ESSTA also expands the definition of covered family member for both sick and safe time absences.

In the final hours before the May 5 effective date, NYC released an [updated model paid sick leave notice](#), which employers can use to satisfy ESSTA's notice obligations. Covered New York City employers must provide employees hired on or after May 5 with notice of their paid safe and sick time rights under ESSTA. Covered employers also must provide the updated paid safe and sick time notice to existing employees within 30 days of ESSTA's effective date, i.e., June 4, 2018.

For more information regarding ESSTA, please see our prior alerts [here](#) and [here](#).

(B) Westchester and Albany Counties

In February 2018, Westchester re-introduced the Employee Earned Paid Sick Time ("EEPST") bill, which was introduced last year but failed to pass. With a political shift in the Westchester legislature, Westchester may become the second jurisdiction in New York State to require paid sick leave.

The EEPST bill, if passed, would provide most employees, as defined in section 190(2) of the New York Labor Law, who work in Westchester County for more than 80 hours in a calendar year, with paid sick leave. Eligible employees would begin to accrue sick leave at the start of employment or 90 days after the ordinance goes into effect, whichever is later. Employers would need to allow accrual at least as fast as one hour of paid sick leave for every 30 hours worked. Covered employers with five or more employees would need to provide up to 40 hours of paid sick leave per year, while employers with fewer than five employees would need to provide up to 40 hours of unpaid sick leave per year. Although employers may frontload sick leave instead of allowing employees to accrue it, it appears that frontloading sick leave would not get rid of employers' carryover obligations. Employees would be permitted to carry over any earned but unused time at year-end, unless the employer pays an employee for the unused time and frontloads sick leave at the beginning of the subsequent year.

We will continue to monitor and provide updates on EEPST bill developments.

Similarly, Albany County recently introduced paid sick leave legislation, called the Albany County Paid Sick Leave Act ("PSLA"), that would require employers in the County to provide certain employees with paid sick leave. Under the current draft PSLA, eligible employees would be entitled to accrue one hour of sick leave for every 30 hours worked, with accrual and usage thresholds varying based on the size of the employer as follows:

- Employers with ten or more employees would need to allow employees to earn and use up to 72 hours of paid sick leave in a year;
- Employers with fewer than ten but more than five employees would need to allow employees to earn and use up to 40 hours of paid sick leave in a year; and
- Employers with five or fewer employees would need to allow employees to earn and use (1) up to 40 hours of unpaid sick leave during the first year after the PSLA goes into effect, (2) up to 24 hours of paid sick leave and 16 hours of unpaid sick leave during the second year after the PSLA goes into effect; (3) up to 32 hours of paid sick leave and 8 hours of unpaid sick leave during the third year after the PSLA goes into effect; and (4) 40 hours of paid sick leave each year thereafter. Employees would need to accrue paid sick leave prior to accruing unpaid sick leave, and would be entitled to decide whether to use paid or unpaid sick leave for a particular absence.

Although employers may frontload sick leave, as an alternative to accrual, it appears that frontloading the leave would not get rid of the employers' carryover obligations. Employers covered by the PSLA would need to allow employees to carry over any earned but unused sick leave at year-end. Like the proposed Westchester County EEPST, the current draft PSLA states that no carryover is required if the employer pays an employee for unused time and frontloads a sufficient amount of sick leave at the beginning of the subsequent year.

In light of these recent New York and New Jersey paid sick leave developments, employers should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with these laws and sick leave requirements generally.

To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list.

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