

Management Alert



If Pain (or Anything Else), Yes Gain—Part 67: New York City Council Considers Mandatory Paid Personal Time

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Seyfarth Synopsis: *Since the enactment of New York City's original Earned Sick Time Act ("ESTA") in 2014, the City's employers have dealt with a seemingly steady stream of updates expanding the law's scope. In addition to the recent expansion requiring employers to provide safe time, the New York City Council is considering amending the current sick/safe time law yet again to add a mandatory paid personal time component.*

In its early years, ESTA allowed eligible employees to accrue up to 40 hours of paid sick time ("PST") annually. In late 2017, the law was amended to allow employees to use their accrued PST for safe time reasons in instances where the employee or a covered family member was a victim of a family offense, sexual offense, stalking, or human trafficking, in addition to sick time reasons. The amended law, now called the [Earned Safe and Sick Time Act \("ESSTA"\)](#), went into effect in May 2018 and, among other things, also broadened the definition of a covered "family member," which applies to both the sick and safe time components.¹

In what would be a trailblazing step for municipalities in the country, the New York City Council is now considering another significant amendment to its paid safe and sick time law, namely by introducing a mandatory personal time element. The proposal, called Int. No. 800-A ("the Bill"), would impose even greater substantive burdens on employers, by among other things, allowing covered employees to accrue one hour of personal time for every 30 hours worked, up to 80 hours of personal time per calendar year. These 80 hours would be available for employees to use for any reason and, as the Bill currently stands, would be in addition to the 40 hours of sick/safe time provided to eligible employees. As amended, the law would be called the "Earned Safe, Sick and Personal Time Law" ("ESSPTL").

On May 28, 2019, the New York City Council held a hearing on Int. No. 800-A. Business advocates voiced concerns regarding the Bill's burdens on small businesses. Further, council members questioned whether the coverage threshold for employers, which as proposed provides that the *paid* personal time component would apply to any business with five or more employees (covered employers with fewer employees would be obligated to provide *unpaid* personal time), would unduly burden small businesses.

New York City Mayor Bill de Blasio has expressed support for the Bill, but its future remains uncertain. If enacted, the Bill would take effect 120 days after becoming law.

¹ For more information on New York City paid sick and safe time, see our prior alerts [here](#), [here](#), [here](#), [here](#), [here](#), [here](#), [here](#) and [here](#).

Here are some highlights of the proposed Bill:

- **Employee Eligibility:** As under ESSTA, the ESSPTL, broadly defines “employee” to include any person employed for hire by an employer in any employment within New York City for more than 80 hours in a calendar year.
- **Covered Employer:** As under ESSTA, the ESSPTL, broadly defines “employer” to include any person or entity employing any individual. Employer, however, does not include governmental agencies or certain other public entities.
- **Start of Accrual and Usage Waiting Period:** Under the ESSPTL, personal time would begin to accrue at the law’s effective date (assuming it is enacted) or commencement of employment, whichever is later. Eligible employees would not be entitled to begin using personal time until the later of the 90th calendar day after (a) the law’s effective date (assuming it is enacted) or (b) the employee’s commencement of employment.
- **Accrual Rate and Cap:** Under the ESSPTL, eligible employees would accrue one hour of paid personal time for every 30 hours worked, up to 80 hours per calendar year. In addition, employees would continue to accrue one hour of paid safe/sick time for every 30 hours worked, up to 40 hours per calendar year.²
- **Usage and Carryover Caps:** Eligible employees would be able to carry over up to 40 hours of earned, unused paid safe/sick time and up to 80 hours of earned, unused paid personal time to the following calendar year. An employer would not be required to permit employees to use more than 40 hours of paid safe/sick time or more than 80 hours of paid personal time per year.³
 - **Carryover Exception:** The Bill notes that to avoid year-end carryover an employer can (1) pay the employee for any unused time at the end of the calendar year in which the time is accrued and (2) provide the employee with an amount of paid time that meets the requirements of the ESSPTL (i.e., 80 hours of personal time and 40 hours of safe/sick time) on the first day of the subsequent calendar year.
- **Reasons for Use:** Employees would be able to use accrued personal time for any reason, including the reasons authorized for use of safe/sick time.
- **Use of PTO:** Employers would be able to substitute and use other employer-provided paid leave (i.e., paid vacation, paid personal days, PTO, etc.) for compliance if the employer provides employees with the right amount of time off that can be used for the same purposes and under the same conditions as personal time under the Bill.
- **Increments of Use:** The Bill notes that employees would be able to determine how much accrued personal time they need to use, except that employers would be able to set a reasonable minimum increment for the use of personal time not to exceed four hours per day.
- **Notice to Employer:**
 - **Foreseeable Absences:** Under the ESSPTL, employers would be able to require reasonable advance notice of the intention to use personal time, not to exceed 14 days prior to the date the leave is expected to begin.
 - **Unforeseeable Absences:** As with ESSTA, under the ESSPTL, an employer may require notice of unforeseeable uses of paid personal time as soon as practicable.
- **Documentation:** Employers would still be able to require reasonable documentation for safe/sick leave for absences of

² The Bill currently states the following on accrual: “All employers shall provide a minimum of one hour of safe/sick time **and** one hour of personal time for every thirty hours worked by an employee, provided that employers shall not be required under this chapter to provide more than a total of forty hours of safe/sick time **and** a total of eighty hours of personal time for an employee in a calendar year.” Proposed Int. No. 800-A, § 20-913(5)(b) (emphasis added) (removing brackets and underlines that appear in the current Bill).

³ The Bill currently states the following on carryover and usage caps: “Up to forty hours of unused safe/sick time as provided pursuant to this chapter **and** up to eighty hours of unused personal time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer shall be required to (i) allow the use of more than forty hours of safe/sick time **or** more than eighty hours of personal time in a calendar year...” Proposed Int. No. 800-A, § 20-913(5)(h) (emphasis added) (removing brackets and underlines that appear in the current Bill).

more than 3 consecutive work days as permitted under ESSTA. However, the Bill expressly states that employers will not be able to require documentation for use of personal time.

- **Notice and Posting:** Employers would be required to provide notice to employees and display a poster of employees' rights under the law. Specifically, employers would be required to provide each employee with a written copy of the notice at the time of the employee's hiring if hired after the effective date of the ESSPTL, or within 30 days of the law's effective date for current employees.
- **Separation of Employment:** The Bill notes that employers are not obligated to reimburse employees for earned, unused paid sick/safe or paid personal time upon separation of employment.

New York City employers should be on the lookout for further developments involving the proposed ESSPTL. We will continue to monitor the Bill and provide updates on developments as they arise.

With the paid sick leave landscape continuing to expand and grow in complexity, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law 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. Companies interested in Seyfarth's paid sick leave laws survey should reach out to sickleave@seyfarth.com.

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