

# Management Alert



## If Pain, Yes Gain—Part 54: NYC Amends Earned Safe and Sick Time Rules and FAQs

By Joshua D. Seidman, Tracy M. Billows, and William P. Perkins

**Seyfarth Synopsis:** Through a set of rules titled “Procedures of the Office of Labor Policy and Standards,” New York City amended portions of the rules pertaining to the Earned Safe and Sick Time Act. The amended Earned Safe and Sick Time Rules, along with corresponding amendments to the city’s sick time FAQs, went into effect on September 20, 2018.

Since New York City’s [Earned Safe and Sick Time Act \(“ESSTA”\) amendments](#) went into effect on May 5, 2018,<sup>1</sup> covered employers have awaited corresponding amendments to the city’s Earned Sick Time Rules (the “Rules”). With minimal publicity or notice, the city released these amended rules as part of its rules governing the “[Procedures of the Office of Labor Policy and Standards](#).” The amended Earned Safe and Sick Time Act Rules (the “Amended Rules”) went into effect on September 20, 2018.<sup>2</sup>

This is [not the first time the Rules were amended](#) since the city’s Earned Sick Time Act went into effect in April 2014. In early 2016, the city released and then finalized an “Amendment of Earned Sick Time Rules” that imposed additional compliance obligations on employers. As with the Rules’ initial amendment, the Amended Rules impose additional compliance obligations on employers, including, as discussed below, updated aspects of employers’ written sick time policy requirement.

In addition to releasing Amended Rules, on September 20, 2018 the city also released amended paid sick time FAQs. The [amended FAQs](#) account for developments from both ESSTA and the Amended Rules.

Here are some of the highlights of the Amended Rules:

- **Written Sick Time Policy Requirement (Section 7-211 of the Amended Rules; previously Section 7-12 of the Rules):** A major component of the Rules when they were amended in March 2016 was the addition of an express written sick time policy requirement. The Amended Rules expand this obligation in the following ways:
  - **Communicating Policy:** The Rules previously stated that employers must distribute or post their written sick time policies. However, under the Amended Rules simply posting a written sick time policy is no longer sufficient. Instead, employers now must distribute their written safe and sick time policies personally to employees in at least three situations: (a) upon commencement of employment; (b) within 14 days of the effective date of any changes to the policy; and (c) upon request by the employee.
- **“Single Writing”:** The Amended Rules state that “every employer shall maintain written safe time and sick time policies *in a single writing*.” (emphasis added). This language implies that employers with a main paid sick time or other paid time off policy and a corresponding NYC sick time addendum or supplement that exist in separate documents and are used for ESSTA compliance may need to combine these items into a single document that follows the above employee distribution requirements.

1 In addition to the above link, for more information on ESSTA, see our earlier posts [here](#) and [here](#).

2 See Rules of the City of New York, Title 6, Ch. 7, §§ 7-201 - 7-215, available at [http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/admin/newyorkcityadministrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:newyork_ny) (stating that the City Record was amended on August 21, 2018, and that the amendments became effective on September 20, 2018).

- **Express Components - Confidentiality:** The written sick time policy requirement lists several substantive topics that must explicitly be included in employers' written sick time policies.<sup>3</sup> Some such topics include (a) the employer's method for calculating safe and sick time (i.e., accrual or frontloading) and related details, (b) the employer's policy on year-end carryover, (c) employee notice requirements, (d) documentation standards, and (e) minimum increments of use. The Amended Rules add a new substantive topic to this list. In particular, the Amended Rules state that "an employer's written safe time and sick time policies must...state at a minimum...a description of the confidentiality requirements of Section 20-921" of ESSTA.
- **Express Components - Non-Sick Paid Leave Policies:** The Amended Rules also add a written policy requirement for non-sick paid leave policies. The Amended Rules state that where an employer uses a term other than "safe/sick time" or "safe and sick time" to describe their paid leave program and comply with ESSTA, "the policy must state that such leave may be used by an employee for any of the purposes" under ESSTA "without any condition prohibited by" ESSTA.
- **NYC Department of Consumer Affairs Materials Insufficient:** The Rules explained that employers cannot satisfy the written sick time policy requirement by simply distributing the "[Notice of Employee Rights](#)." The Amended Rules expand this exclusion by noting that, in addition to the Notice of Employee Rights, employers cannot use "any other department writing in lieu" of distributing their own written sick time policy.
- **Joint Employers (Section 7-105 of the Office of Labor Policy and Standards ("OLPS"); previously Section 7-03 of the Rules):** The Amended Rules remove the definition of "temporary help firm" and section about joint employers. The topic of "joint employers" is now revised and included in the rules for the OLPS. Per the relevant section of the OLPS rules, joint employers will be held individually and jointly liable for violations of all applicable OLPS laws and rules, including ESSTA and the Amended Rules, and satisfaction of any associated penalties or restitution. The OLPS rules include a definition of "joint employer."
- **Payment of Safe and Sick Time (Section 7-208 of the Amended Rules; previously Section 7-09 of the Rules):** The Amended Rules remove provisions about calculating sick time payment for employees paid on a piecework basis. In addition, the Amended Rules add language about calculating sick time payment when an employee is paid a flat rate.
- **Retaliation and Enforcement Procedures (Sections 7-108 and 7-109 of the Office of Labor Policy and Standards; previously Sections 7-17 and 7-14 of the Rules):** The Amended Rules remove the Rules' language on enforcement procedures and retaliation, both of which have been updated and are now included in the OLPS rules.

New York City employers should take steps now, including reviewing existing sick leave policies and either implementing new policies or revising existing policies, to comply with the Amended Rules.

The paid sick leave landscape has not slowed down in terms of expanded laws and complexity of the laws. 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](mailto:sickleave@seyfarth.com). New York City employers should take steps now, including reviewing existing sick leave policies and either implementing new policies or revising existing policies, to comply with the Amended Rules.

If you would like further information, please contact [Joshua D. Seidman](mailto:jseidman@seyfarth.com) at [jseidman@seyfarth.com](mailto:jseidman@seyfarth.com), [Tracy M. Billows](mailto:twillows@seyfarth.com) at [twillows@seyfarth.com](mailto:twillows@seyfarth.com), or [William P. Perkins](mailto:wperkins@seyfarth.com) at [wperkins@seyfarth.com](mailto:wperkins@seyfarth.com).

<sup>3</sup> The Amended Rules maintain the language stating that "[a]n employer's written safe time and sick time policies must meet or exceed all of the requirements of [ESSTA]."

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