

One Minute Memo®



NYC Earned Sick Time Act Updates

Proposed Changes to Sick Time Rules and Creation of New Enforcement Agency

By William P. Perkins and Joshua D. Seidman

Yesterday, the New York City Department of Consumer Affairs (“DCA”) held a public hearing on proposed updates to the [Earned Sick Time Act \(“ESTA”\) Rules](#). The proposed Rules, if adopted, would clarify certain aspects of ESTA, and impose additional compliance burdens on employers covered under ESTA. For more information on ESTA’s requirements, see our earlier posts [here](#) and [here](#).

The proposed Rules would specifically affect the following substantive topics:

- ESTA definitions, namely by adding a definition of “temporary help firm” (Section 7-01 of the Rules);
- Determining business size under ESTA (Section 7-02 of the Rules);
- Compliance for joint employers and temporary help firms (Section 7-03 of the Rules);
- Minimum increments of using paid sick time (Section 7-05 of the Rules);
- Employee notification of use of sick time (Section 7-06 of the Rules);
- Rate of pay for sick time used under ESTA (Section 7-09 of the Rules);
- Sale of an employer’s business and ESTA implications (Section 7-11 of the Rules);
- Written sick time policies (Section 7-12 of the Rules);
- Employer recordkeeping requirements (Section 7-13 of the Rules);
- Enforcement of and penalties under ESTA (Section 7-14 of the Rules);
- Accrual, hours worked, and carry over (Section 7-15 of the Rules);
- Employee abuse of sick time (Section 7-16 of the Rules); and

- Retaliation (Section 7-17 of the Rules).

The proposed Rules likely will be finalized before the DCA transitions its ESTA enforcement authority to the NYC Office of Labor Standards (the "Office"), a move allowed under ESTA's current definition of "Department."¹ The Office was created when Mayor Bill de Blasio signed [Bill 743A](#) in November 2015. It currently is unclear whether the Office will be covered under the jurisdiction of an existing city Agency or whether it will operate as a separate unit. In addition, Mayor de Blasio has not yet appointed a director to head the Office. However, and importantly, one of the Office's primary responsibilities -- enforcing ESTA -- will include, among other duties, receiving complaints, conducting investigations, holding hearings, and imposing penalties.

We will be sure to advise you on any future developments involving the proposed Rules, Office of Labor Standards, and ESTA.

[William P. Perkins](#) is a partner in Seyfarth's New York office, and [Joshua D. Seidman](#) is an associate in the firm's New York office. If you would like further information, please contact your Seyfarth attorney, or William P. Perkins at wperkins@seyfarth.com, or Joshua D. Seidman at jseidman@seyfarth.com.¹

¹ See N.Y.C. Admin. Code, tit. 20, ch.8., § 20-912(s) (" 'Department' shall mean the department of consumer affairs or such other agency as the mayor shall designate pursuant to section 20-925 of this chapter. ").

www.seyfarth.com



Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP One Minute Memo® | January 12, 2016

©2015 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.