

Update: Amendments to New York City's Paid Sick Leave Law

Changes Effective April 1st Expand Obligations for Employers.

By Kenneth W. Taber and Teresa T. Lewi

On March 20, 2014, New York City Mayor Bill de Blasio signed into law the first piece of legislation in his tenure: amendments to the Earned Sick Time Act (“ESTA”) that impose additional requirements on almost all private employers in the City, with enforcement set to begin on April 1st.

As noted in a Pillsbury Client Alert on January 6, 2014, the New York City Council passed the ESTA in 2013, mandating most private city employers to provide paid sick leave to employees, maintain records of sick leave taken by employees, and give notice to new employees of their ESTA rights, among other requirements. With this latest round of amendments:

- **More City Employers Must Provide Paid Sick Leave.** As amended, the ESTA requires private employers with as few as five employees (or at least one domestic worker) to provide their employees with *paid* sick leave, which employers may cap at 40 hours per calendar year. Employees may also carry forward up to 40 hours of unused sick leave each year. In addition, the amendments now require private employers with fewer than five employees to provide up to 40 hours of *unpaid* sick leave per calendar year, and no longer exempt manufacturers from the paid sick leave requirements. The ESTA still does not apply to federal, state, or local government employers, to independent contractors, to individuals working under certain work-study programs, and to certain hourly professional employees.
- **No Phase-In Period for Employers.** All covered employers in New York City will be required to comply with the ESTA beginning April 1, 2014, unless there is a valid collective bargaining agreement (“CBA”) in place. In such situations, the ESTA becomes effective upon the CBA’s termination date, unless the ESTA’s provisions are expressly waived by the parties and the CBA provides for comparable paid time-off benefits. The amendments eliminate the phase-in period that had allowed employers with fewer than five employees and employers of domestic workers to delay compliance with the ESTA until October 1, 2015.
- **Sick Leave May Be Used to Care for More Family Members.** Under the amendments, the ESTA’s definition of “family member” now also includes grandchildren, grandparents, and siblings (including step-siblings, half-siblings, and adoptive siblings). Employees may use their sick leave to care for those

family members, as well as their spouse, domestic partner, child, parent, or the child or parent of their spouse or domestic partner.

- **Notice Must Be Provided to All Covered Employees.** Employers must provide their employees—both new and current—with a written notice of their rights under the ESTA at the commencement of their employment or by May 1, 2014, whichever is later. The New York City Department of Consumer Affairs (“DCA”) has posted a “Notice of Employee Rights” [on its website](#). Employers must distribute this notice in both English and in the employee’s primary language (so long as the DCA has made a translation available in that language).
- **Records Must Be Kept for Three Years.** The amendments require employers to maintain written records of their compliance with the ESTA for three years, instead of the two years provided in the original law.
- **Grace Period for Certain Employers.** Employers with fewer than 20 employees and certain employers in the manufacturing sector (specifically, those classified in sectors 31, 32, or 33 of the North American Industry Classification System) will not be subject to civil penalties for a violation of the ESTA before October 1, 2014. However, other remedies, such as equitable relief, may still be imposed prior to October 1. First-time violations committed before October 1 by employers covered by the grace period will not serve as a factor in determining penalties for subsequent violations occurring after the grace period. But, if the employer commits more than one violation during the grace period, the violations can lead to increased penalties if the employer commits subsequent violations after the grace period.
- **Thirty-Day Deadline to Respond to Complaints.** The amendments add a requirement that employers respond within 30 days to any written notice they receive from New York City regarding an alleged violation of the ESTA.
- **Statute of Limitations Increased to Two Years.** The statute of limitations for violations of the ESTA will be two years from the date on which the employee knew or should have known of the alleged violation. Prior to the amendments, the limitations period was 270 days.
- **Mayor May Assign Enforcement Powers to Other Agencies.** While the DCA is responsible for enforcement, the amended ESTA allows the Mayor to designate another agency to enforce the ESTA instead. The enforcing agency may investigate violations and assess monetary damages, civil penalties, and equitable relief.

Notably, the ESTA does not require employers to provide extra paid leave if (1) they already have a paid time-off policy that offers at least the same amount of paid leave as provided by the ESTA (*i.e.*, one hour of paid sick leave for every 30 hours worked, subject to a maximum requirement of 40 hours of paid sick leave per calendar year), and (2) their paid time-off policy allows employees to use paid leave for the same purposes and under the same conditions as the ESTA.

The amendments do not change the requirement that employees must be hired for more than 80 hours in a calendar year to be entitled to use sick leave. In addition, while sick leave begins accruing at the later of the employee’s date of hire or April 1, employees are not entitled to use their sick leave until 120 days after either their commencement of employment or April 1, whichever is later.

All New York City employers need to review their sick leave policies and make any necessary adjustments before April 1. Employers would also be well-advised to:

- Distribute the notice from the DCA to new hires and current employees. In addition to providing the mandatory written notice, employers may also post the notice conspicuously in an area accessible to employees.
- Maintain, for at least three years, detailed records that track each employee's accrual and use of sick time, and document compliance with the ESTA's provisions.
- Develop policies that comply with the divergent laws of different jurisdictions (for employers also operating in locations outside of New York City that have their own sick leave laws, such as the District of Columbia and San Francisco).

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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