

Mandatory Sick Time Requirements for NYC Employers and Reminder about New York State Minimum Wage Increases

On April 1, 2014, a new law will likely take effect that requires employers to provide sick time to all of their employees who work at least 80 hours per calendar year within New York City. (1)

The Basics

Employees covered by this law will accrue sick time based on the number of hours they work, at the rate of one hour of sick time for every 30 hours worked. Employers are permitted to cap the accrual of sick time at 40 hours per calendar year. Accrual of sick time begins on the first date of employment. Employees may begin using their accrued sick time 120 calendar days after the law goes into effect, or 120 calendar days after their first day of work, if hired after April 1, 2014. (2) "Calendar year" means any regular and consecutive twelve-month period, as determined by the employer.

Whether the employee's accrued sick time hours are paid or unpaid will depend on the size of their employer. As of April 1, 2014, employers with 20 or more employees will have to provide paid sick time, and all smaller employers will have to provide unpaid sick time. On October 1, 2015, the paid leave requirement will extend to employers with 15 or more employees. If an employer's existing leave policy meets or exceeds the requirements of the new law, it will not be required to provide employees with additional time off.

Employees are entitled to carry over accrued but unused sick time from one calendar year to the next. Although there is no maximum amount that can be accrued, employers may establish a policy limiting the use of sick time to a total of 40 hours per calendar year. Sick time may be used in no less than four (4) hour blocks. Furthermore, an employer is not required to pay an employee for unused sick time that accrues under the law, even upon separation from employment (e.g. resignation, retirement, termination).

Under the new law, an employee is entitled to use sick time due to:

- I. that employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventative medical care;
- II. the care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventative medical care;
- III. the closure of that employee's place of business due to a public health emergency; or
- IV. that employee's need to care for a child whose school or childcare provider was closed due to a public health emergency.

Required Notices

Employers must notify covered employees in writing at the commencement of employment of their right to sick time, their right to be free from retaliation for using sick time, and their right to file a complaint for a violation. A notice must also be posted in an area accessible to employees at the employer's place of business. The employer is also required to keep records of hours worked by employees, including the amount of sick time accrued and used, for a two-year period. The Department of Consumer Affairs is the New York City government agency charged with enforcing the law. This agency has yet to publish any guidance on compliance with the notice requirements, but will likely provide sample forms/notices to be utilized by employers.

Unionized Employers

The application of the law to a unionized workforce is slightly different. For employees covered by a valid collective bargaining agreement in effect as of the effective date of the law, the law will not apply. When negotiating a new collective bargaining agreement after the effective date of the law, however, the employer and union may avoid application of the law if the collective bargaining agreement (i) expressly waives the leave provisions of the new law; and (ii) provides for a comparable benefit. The provisions of the law will not apply to grocery or construction employees covered by valid collective bargaining agreements that expressly waive them, regardless of whether the agreement provides for a comparable benefit.

What You Should Do

In order to assist covered employers in complying with this new law, we recommend the following actions:

- Examine and modify (where necessary) existing sick time policies and be ready to implement them when the law takes effect.
- Calendar the date(s) that the provisions of the new law may become effective as to your company, which will vary depending on the number of employees working 80 or more hours a year within New York City. Remember, although your employees will begin accruing sick time right away, there is an initial 120-day waiting period before they are allowed to use it.

| | Employers with fewer than 15 employees | Employers with 15-19 employees | Employers with 20 or more employees |
|--------------|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Obligations: | Must begin accruing <i>unpaid</i> sick time as of April 1, 2014. | Must begin accruing <i>unpaid</i> sick time as of April 1, 2014. Must begin accruing <i>paid</i> sick time as of October 1, 2015 | Must begin accruing <i>paid</i> sick time as of April 1, 2014. |

- Obtain and utilize the appropriate forms and notices associated with the law when they become available.
- Evaluate procedures and policies for employees requesting sick time, to minimize business disruptions and ensure compliance with the law.
- Remember that, regardless of this new law, exempt employees may not have pay deducted for less than a full-day absence, as doing so may jeopardize that employee's exempt status.
- Define, in the company's employee handbook/manual, the calendar year to be applied for the purposes of computing/accruing/using sick time, which does not need to be tied to the law's effective date.
- For companies with over 50 employees, consider that this new law may impact compliance with the Family and Medical Leave Act. For example, an employee may now accrue paid sick time while using intermittent FMLA leave.

REMINDER FOR ALL EMPLOYERS OPERATING IN THE STATE OF NEW YORK

Increases in the New York State minimum wage will take effect in accordance with the following schedule:

- December 31, 2013 – increased from \$7.25 to \$8.00;
- December 31, 2014 – increased from \$8.00 to \$8.75; and
- December 31, 2015 – increased from \$8.75 to \$9.00.

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(1) The effective date of the law depends on the performance of the New York City economy. If, on December 16, 2013, the economy is performing at or better than it was in January 2012, then the law will go into effect on April 1, 2014. If not, subsequent economic evaluations will be conducted by the City's Independent Budget Office every six months. Once the economy is determined to be performing at the January 2012 level, the law will become effective the following April 1 or October 1, whichever is sooner.

(2) After the initial 120-day waiting period, the law provides that employees may use sick time as they accrue it.

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