

LEGAL ADVISORY

FROM: Paul H. Pincus
TO: Clients and Friends
DATE: July 23, 2018
RE: New York City Mandatory Paid Sick Leave Law Expanded to Include “Safe Leave”

On May 5, 2018, an amendment went into effect expanding and renaming New York City’s Earned Sick Time Act (the “Act”). Since the Act went into effect on April 1, 2014, it has required private sector employers with 5 or more New York City-based employees to provide such employees with paid sick leave of up to 40 hours per twelve-month calendar year, and private sector employers with fewer than 5 New York City-based employees to provide such employees with the same amount of unpaid sick leave.

The Act has been renamed the Earned Safe and Sick Time Act and now requires employers to allow covered employees to accrue time off, and use accrued time off, in the same manner for “safe leave” as for sick leave. In addition, the amended Act has enlarged the definition of “family members” for whom time off can be taken.

Use of Safe Leave

In addition to use of sick leave for themselves or family members, covered employees can now use safe leave time off if the employee or a family member is the victim of a family offense matter, sexual offense, stalking, or human trafficking:

- To obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
- To participate in safety planning, temporarily relocate, or take other actions to increase the safety of the employee or employee’s family members from future family offense matters, sexual offenses, stalking, or human trafficking;

- To meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding, including, but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing, or consumer credit;
- To file a complaint or domestic incident report with law enforcement;
- To meet with a district attorney's office;
- To enroll children in a new school; or
- To take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or employee's family member, or to protect those who associate or work with the employee.

As with sick leave, employers can require reasonable prior notice of the need to use safe leave, where such need is foreseeable.

Expanded Definition of Family Member

Under the prior version of the Act, family member was defined to mean a covered employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of a covered employee's spouse or domestic partner. Family members under the amended Act, now include (i) any other individual related by blood to the covered employee, and (ii) any other individual whose close association to the covered employee is the equivalent of a family relationship.

Absences of Three or More Days

As with sick leave, if a covered employee is to be absent for more than three consecutive work days, you can require reasonable documentation that the use of safe leave is covered by the Act. Such documentation can be (i) from a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider; (ii) a copy of a police or court record; or (iii) a notarized letter from the employee explaining the need for such time. You cannot require that such documentation specify the details of the family offense matter, sexual offense, stalking, or human trafficking.

Notice Requirements

The Act requires you to give written notice to new covered employees at the commencement of their employment, on a form to be created by the New York City Department of Consumer Affairs (a current copy of which is attached). Current employees were to be notified of the Act's new leave requirements by June 4, 2018.

* * *

If you haven't already done so, you should review and update your handbooks and employment policies so that they are consistent with the new requirements imposed by the Act. In addition, if you haven't already done so, you should immediately give notice to all covered employees of their right to accrue and use both sick leave and safe leave using the current form from the New York City Department of Consumer Affairs.

For more information about this Advisory or assistance with compliance, please contact Paul Pincus at 212 588-0022 or php@orlp.legal.



Bill de Blasio
Mayor

**Consumer
Affairs**

Lorelei Salas
Commissioner

NOTICE OF EMPLOYEE RIGHTS

Under New York City's Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law), certain employees have a right to safe and sick leave. Go to nyc.gov/PaidSickLeave to learn which employees are covered by the law.

Employees who work for employers with five or more employees who work more than 80 hours a calendar year in New York City have a right to *paid* safe and sick leave. Employees who work for employers with fewer than five employees have a right to *unpaid* safe and sick leave.

Employees who work for employers who must provide safe and sick leave must receive this written notice from their employer when they begin employment or by June 4, 2018, whichever is later.

YOU HAVE A RIGHT TO SAFE LEAVE, which you can use to seek assistance or take other safety measures if you or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking.

YOU HAVE A RIGHT TO SICK LEAVE, which you can use for the care and treatment of yourself or a family member.

AMOUNT OF SAFE AND SICK LEAVE:

- Your employer must provide up to a total of 40 hours of safe and sick leave every calendar year. You may use any earned leave for either safe or sick leave purposes. Your employer's calendar year is:

Start of Calendar Year: _____ End of Calendar Year: _____

RATE OF ACCRUAL:

- You accrue safe and sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of safe and sick leave per calendar year.

DATE ACCRUAL BEGINS:

You begin to accrue safe and sick leave on April 1, 2014 or on your first day of employment, whichever is later.

Exception: If you are covered by a collective bargaining agreement that was in effect on April 1, 2014, you begin to accrue safe and sick leave under City law beginning on the date that the agreement expires.

DATE SAFE AND SICK LEAVE IS AVAILABLE FOR USE:

- You could begin using sick leave on July 30, 2014 or 120 days after you begin employment, whichever is later.
- You could begin using safe leave on May 5, 2018 or 120 days after you begin employment, whichever is later.

ACCEPTABLE REASONS TO USE SAFE AND SICK LEAVE:

You can use safe and sick leave to take time off from work when:

- You have a mental or physical illness, injury, or health condition; you need to get a medical diagnosis, care, or treatment of your mental or physical illness, injury, or condition; you need to get preventive medical care.
- You must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventive medical care.
- Your employer's business closes due to a public health emergency or you need to care for a child whose school or child care provider closed due to a public health emergency.
- You or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking and you need to take actions necessary to restore the physical, psychological, or economic health or safety of you or your family members or to protect those who associate or work with you, including to:
 - Obtain services from a domestic violence shelter, rape crisis center, or other services program.
 - Participate in safety planning, relocate, or take other actions to protect your safety or that of your family members, including enrolling children in a new school.
 - Meet with an attorney or social service provider to obtain information and advice related to custody; visitation; matrimonial issues; orders of protection; immigration; housing; discrimination in employment, housing, or consumer credit.
 - File a domestic incident report with law enforcement or meet with a district attorney's office.

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FAMILY MEMBERS:

The law recognizes the following individuals as “family members:”

- Any individual whose close association with the employee is the equivalent of family
- Child (biological, adopted, or foster child; legal ward; child of an employee standing *in loco parentis*)
- Grandchild
- Spouse
- Domestic Partner
- Parent
- Grandparent
- Child or Parent of an employee’s spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)
- Any other individual related by blood to the employee

ADVANCE NOTICE:

If the need is foreseeable, your employer can require up to seven days advance notice of your intention to use safe or sick leave. If the need is unforeseeable, your employer may require you to give notice as soon as practicable.

DOCUMENTATION:

Your employer can require documentation if you use more than three consecutive workdays as safe or sick leave. The Paid Safe and Sick Leave Law prohibits employers from requiring the health care provider to specify the medical reason for sick leave or requiring safe leave documentation to specify the details of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking. Disclosure may be required by other laws.

UNUSED SAFE AND SICK LEAVE:

Up to 40 hours of unused safe and sick leave can be carried over to the next calendar year. However, your employer is only required to let you use up to 40 hours of safe and sick leave per calendar year.

YOU HAVE A RIGHT TO BE FREE FROM RETALIATION FROM YOUR EMPLOYER FOR USING SAFE AND SICK LEAVE.

Your employer cannot retaliate against you for:

- Requesting and using safe and sick leave.
- Filing a complaint for alleged violations of the law with DCA.
- Communicating with any person, including coworkers, about any violation of the law.
- Participating in a court proceeding regarding an alleged violation of the law.
- Informing another person of that person’s potential rights.

Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in your hours, or any other adverse employment action against you for exercising or attempting to exercise any right guaranteed under the law.

YOU HAVE A RIGHT TO FILE A COMPLAINT.

You can file a complaint with DCA. To get the complaint form, go online to nyc.gov/PaidSickLeave or contact 311 (212-NEW-YORK outside NYC).

DCA will conduct an investigation and try to resolve your complaint. DCA will keep your identity confidential unless disclosure is necessary to conduct the investigation, resolve the complaint, or is required by law.

Keep a copy of this notice and all documents that show your amount of safe and sick leave accrual and use.

Note: The Earned Safe and Sick Time Act sets the minimum requirements for safe and sick leave. Your employer’s leave policies may already meet or exceed the requirements of the law.

You have a right to be given this notice in English and, if available on the DCA website, your primary language.

For more information, including Frequently Asked Questions, go to nyc.gov/PaidSickLeave or call **311** and ask for information about Paid Safe and Sick Leave.