

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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NYC Employment Law Update

The New York City Council has recently enacted two bills that are of particular note for our New York City (NYC) clients. The first, which became law on Dec. 24, 2021, provides sick leave for parents taking their child(ren) for a COVID-19 vaccine, or caring for them due to temporary side effects from the vaccine. The second, which was enacted on Jan. 15, 2022, requires a salary range to be posted on job listings. Below are some key takeaways from both:

I. COVID-19 Child Vaccination Time – Became Law on Dec. 24, 2021, Amends NYC’s Earned Safe and Sick Time Act (citations below)

- **Who is covered by this law?** All private NYC employers. For employers with less than five employees and a net income of less than \$1 million, leave is unpaid.
- **When does the law go into effect?** Immediately, with retroactive application dating back to Nov. 2, 2021. However, there is a 60-day “phase-in” period, ending after Feb. 22, 2022, during which penalties will not be enforced “without first providing an employer with written notice of an alleged violation and 15 days to cure[.]”
- **How much time off is being granted?** Four hours leave, per injection, per child.
- **How may the leave be used?** To accompany a child to a vaccine, or to care for a child due to temporary side effects from the vaccine.
- **How is “Parent” defined?** Parent is inclusive of “a biological, foster, step- or adoptive parent,” a legal guardian, or one “who currently stands in loco parentis. . .or a person who stood in loco parentis when an employee was a minor child.”
- **How is “Child” defined?** “Child” is inclusive of “a child under the age of 18, or. . .an older child who is incapable of self-care because of a mental or physical disability.”
- **May an employer require notice?** Yes - if the need to use such time off is foreseeable, an employer may require “reasonable advance notice,” not to exceed seven days. Alternatively, if the leave is not foreseeable, the employer may require to be notified “as soon as practicable.”
- **May an employer require proof the child was vaccinated?** Yes – employers may require “reasonable documentation” to be presented within seven days that the child for whom the leave was taken was vaccinated against COVID-19.
- **May an employer require an employee to make up the missed time, or may the employer require an employee to search for someone to replace them in their absence?** No.
- **How would this impact a Collective Bargaining Agreement (CBA)?** The impact is similar to NYC’s Earned Safe and Sick Time Act in general, with the Amendment adding one new addition in (c) below:
 - (a) “The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees

covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, safe/sick time, and holiday and Sunday time pay at premium rates.

(b) Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

(c) Notwithstanding subdivisions a and b of this section, the requirement to provide COVID-19 child vaccination time as set forth in section **20-914.1 cannot be waived.** *(emphasis added)*.

- Notably, if a CBA or other contract or plan is in place offering a more generous leave, this law does not provide the employer with relief from compliance with those terms.
- **When must the employee be paid for this leave time?** “[N]o later than the payday for the next regular payroll period beginning after” leave was taken, or if such leave was taken prior to December 24 (but after November 2), “no later than the payday for the next regular payroll period beginning after the law” took effect.
- **Is there a retaliation provision?** Yes, § 20-918(c) of the NYC Administrative Code is amended to include COVID-19 Child Vaccination Time as protected leave against which adverse employment actions are prohibited. Civil penalties may be imposed for violations of this section (see immediately below).
- **What are the penalties for non-compliance?**
 - **If leave was taken but not compensated:** For each instance, the greater of either three times the wages the employee would have been paid, or \$250;
 - **If leave was unlawfully denied or charged against an employee’s paid safe/sick time accruals:** \$500;
 - **Additional civil penalties:** On a per employee basis, up to, and inclusive of, \$500 for the first violation and, for any additional violations within two years of a previous violation, up to, and inclusive of, \$750 for the second violation, and up to, and inclusive of, \$1,000 for each additional violation.
- **Does the law expire?** Yes, on Dec. 31, 2022, but any leave accrued on, or prior to, that date must be paid.
- **What steps should covered employers take and when?** Covered employers should amend their safe and sick time policy to include this leave time entitlement and its effective date, if there is not already a greater entitlement. Additionally, covered employers should determine whether, after Nov. 2, 2021, there are instances of such leave being taken, but not compensated, or which were denied or counted against an employee’s Safe/Sick Leave time, and compensate the employee accordingly in the upcoming payroll, and retroactively adjust their Safe/Sick Leave. We encourage you to consult an attorney as needed or if you have questions.

- **Must an employer notify employees of this new available leave?** The Amendment is silent on this, and likewise does not amend the provision of NYC's Earned Safe and Sick Time Act requiring notice be given to employees. However, employers may wish to share this new NYC notice with employees, [which details this new available leave on page 2](#).
- **Where is this codified?** [Amends NYC's Earned Safe and Sick Time Act](#) (Ch. 8, Title 20 of NYC Administrative Code) by adding a new section, § 20-914.1, and amending numerous sections from § 20-912 through § 20-924.

II. Requiring Minimum and Maximum Salary on Job Listings – Enacted Jan. 15, 2022

- **Who is covered by this law?** The bill amends the NYC Human Rights Law, which applies to NYC private and NYC Government **Employers** of four or more persons, “at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice,” as defined in § 8-107 of Ch. 1, Title 8 of the NYC Administrative Code, inclusive of failure to post salary range on job advertisements under this new law.
Note: Independent contractors and the employer’s parent, spouse, domestic partner or child (if employed by the employer) are all counted in this determination.
 - **Employment agencies**
 - **Employees**
 - **Agents thereof**
- **When does it go into effect?** The law was enacted on Jan. 15, 2022, and goes into effect 120 days later, on May 15, 2022. The Commission may also promulgate rules prior to this date.
- **What is the new requirement being asked of NYC employers?** Stating the minimum and maximum salary for positions in advertisements/job listings.
- **What type of ads are covered?** While the bill does not provide a definition of what constitutes an advertisement, we do know this applies to jobs, transfers or promotions. The amendment also uses the terms “posting” and “listings,” so it likely would apply quite broadly (the bill’s Summary states it would cover “any position located within New York City.”) It does not apply to ads for temporary employment at a temporary help firm.
- **What degree of certainty is required when posting the salary range?** What “the employer in good faith believes at the time of the posting it would pay for” that position.
- **Where is this to be codified?** [Amends Title 8, § 8-102 and Title 8, § 8-107 of NYC Administrative Code \(adding a new subdivision: 32\).](#)

If you have any questions or need Bond’s help, please contact [Lisa R. Feldman](#), any attorney in Bond’s [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

