

New York City statute grants employees new sick leave rights

The New York City Council has passed the Earned Sick Time Act (ESTA), overriding Mayor Michael Bloomberg's veto. The law will be phased in for private employers.

Under ESTA, private-sector employers with 20 or more employees in New York City will be required to offer each employee at least 40 hours of *paid* sick leave per year beginning on April 1, 2014.

Beginning Oct. 1, 2015, the staffing threshold falls to 15 or more employees.

Private employers with fewer than 20 employees must offer at least 40 hours of *unpaid* sick leave per year to each employee beginning on April 1, 2014.

That threshold also falls to 15 employees in 2015.

Note: The implementation dates could be postponed if the economy underperforms, as determined by certain Federal Reserve Bank of New York metrics.

ESTA does not cover independent contractors, work-study students, public-sector employees and some hourly professional employees.

The law prohibits employers from retaliating against employees for their use of sick leave or for filing a complaint alleging a violation of ESTA.

Earning paid sick leave

ESTA grants eligible employees at least one hour of sick leave for every 30 hours worked.

However, employers don't have to permit employees to use accrued sick leave until 120 calendar days after they start work.

ESTA also covers part-time employees, who will earn sick leave at the same rate.

Employers may allow faster accrual of sick leave than the law requires and may allow employees to use sick leave within their first 120 calendar days if they so choose.

The number of employees that an

employer has is determined by counting all compensated workers during a given week, including full-time, part-time and per diem employees. If the number of employees fluctuates, the size of the employer may be determined for the current calendar year based upon the average number of employees who worked per week during the preceding calendar year. In chain businesses, the total number of employees in the group of establishments must be counted.

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Taking leave

Accrued sick leave may be used for absences due to:

- The employee's own health condition
- The employee's need to care for a spouse, domestic partner, child, parent or the child or parent of a spouse or domestic partner
- The closure of the employee's place of business due to a public health emergency or the employee's need to care for a child whose school or child-care provider has been closed due to a public health emergency.

An employer may require documentation that sick leave was used for one of these purposes only if the absence is for more than three consecutive workdays.

ESTA appears patterned after the FMLA, at least as far as providing notice of the need for leave is concerned. Employers may require reasonable notice from an employee who intends to use sick leave. If the sick leave is foreseeable, the

employer may require up to seven days' notice.

If the sick leave is not foreseeable, an employer may only require notice as soon as practicable.

If an employee is transferred from one location to another location within New York City, but continues to be employed by the same employer, the employee is entitled to keep his or her accrued sick leave.

However, an employer is not required to provide financial or other reimbursement to an employee upon termination, resignation, retirement or other separation, whether voluntary or involuntary, for accrued unused sick leave.

ESTA in union workplaces

ESTA does not apply to any employee covered by a valid collective bargaining agreement, as long as the provisions of ESTA are expressly waived in the collective bargaining agreement and the agreement provides for a comparable benefit to covered employees in the form of paid days off.

For employees in the construction or grocery industry who are covered by a valid collective bargaining agreement, there is no requirement that the agreement provide for a comparable benefit to covered employees in order for such employees to be exempt from the provisions of ESTA. It is sufficient for the collective bargaining agreement to expressly waive the provisions of ESTA, regardless of whether a comparable benefit is provided.

What you should do now

- All New York City employers should get expert legal help to set up leave systems that comply with ESTA.
- Employers with unionized workplaces should contact their attorneys now to see where current collective bargaining agreements stand.