



New York City Employers Must Provide “Safe Time” Leave To Employees

November 28, 2017

On November 6, 2017, New York City Mayor Bill de Blasio signed into law an amendment (Intro. 1313-A) to the Earned Sick Time Act (the “Act”). This amendment: (1) expands the Act to require New York City employers to allow victims of family offense matters and their family members to use earned “safe time” in connection with such abuse; (2) expands the list of covered family members for whom sick and safe leave can be used; and (3) amends existing provisions of the Act to address safe time use, documentation, confidentiality, and notice. The amended law renamed the Earned Sick and Safe Time Act (“ESSTA”), is scheduled to take effect on May 5, 2018.

As was the case under the Act, under ESSTA, New York City employers who employ five (5) or more employees must provide paid sick and safe leave, while employers with less than five employees must provide unpaid sick and safe leave, to employees and their family members. ESSTA expands the definition of “family member” to include for both safe and sick leave: (1) a child; (2) spouse; (3) domestic partner; (4) parent; (5) sibling; (6) grandchild; (7) grandparent; (8) the child or parent of an employee’s spouse or domestic partner; (9) any other individual related by blood to the employee; and (10) any other individual whose close association with the employee is equivalent of a family member. For employees covered by a valid collective bargaining agreement (“CBA”) in effect on May 5, 2018, ESSTA will apply when the CBA terminates or a new CBA is executed. Once one of these two events occur, ESSTA will apply to CBA-covered employees unless the CBA expressly waives ESSTA’s requirements and provides employees with a comparable benefit in the form of paid days off.

Under ESSTA, earned safe time can be used for any of the following reasons:

1. 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;
2. To participate in safety planning, temporarily or permanently 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;
3. 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;
4. To file a complaint or domestic incident report with law enforcement;
5. To meet with the district attorney’s office;
6. To enroll children in a new school; or

7. To take other actions necessary to maintain, improve or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

While ESSTA imposes an additional set of circumstances in which employers must permit employees to take leave (see above), it does not add to the total amount of leave an employee is entitled to take. Thus, employers with five (5) or more employees are still required to provide a minimum of one hour of safe/sick time for every thirty hours worked by an employee, to equate to not less than forty hours of safe/sick time in a calendar year.

Finally, as previously stated, ESSTA contains specific provisions for safe time use as it relates to employee notification, documentation, and confidentiality. Under ESSTA, an employer can require an employee to provide up to seven days' notice of a foreseeable absence. For unforeseeable absences, notice must be provided as soon as practicable. For an absence of more than three (3) consecutive workdays, reasonable documentation demonstrating that leave was used for a covered purpose can be required. The following constitutes reasonable documentation:

1. Documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a clergy member, or medical or other professional service providers for whom the employee or a family member sought assistance;
2. A police or court record; or
3. A notarized letter from the employee explaining the need for the leave.

Employers are prohibited from requiring (a) that documentation specify the details of the family offense matter, sexual offense, stalking or human trafficking, or (b) that the employee discloses details relating to an employee's or family member's victim status as a condition of providing leave. Information concerning victim status obtained solely for utilizing leave must be treated as confidential and cannot be disclosed unless the employee consents in writing to such disclosure. Employers, however, may consider the information in connection with a request for reasonable accommodation pursuant to the New York City Human Rights Law.

With ESSTA scheduled to take effect in less than a year, employers should:

- Update their employee handbooks and any existing leave policies and procedures to comport with ESSTA to include safe time;
- Provide employees hired on or after May 5, 2018, with notice of their paid sick time rights, including their right to safe time under ESSTA. This notice should be provided to employees upon commencement of employment in English and in the employee's primary language if the New York City Department of Consumer Affairs has created a notice in that language; and
- Provide notice to current employees of their right to safe leave by June 4, 2018.

Please note that this is a general overview of developments in the law, and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions or any other aspect of employment law, please contact Thomas B. Wassel at 516-357-3868 or twassel@cullenanddykman.com or Cecilia R. Ehresman at 516-357-3727 or cehresman@cullenanddykman.com.

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