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Employment & Benefits

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New Requirements for New York City Employers

New York City's New Sick Leave Law

Effective April 1, 2014, the New York City Earned Sick Time Act (the "Act") will require nearly all New York City employers to provide sick leave to employees and to provide a written notice of rights under the Act to all new hires and employees (as described below). The Department of Consumer Affairs ("DCA"), which is responsible for enforcing the Act, recently released FAQs to address certain questions raised in response to the Act.

Under the Act, most employers with five or more employees who work more than 80 hours per year while physically present in New York City must provide such employees with one hour of *paid* sick leave for every 30 hours worked, up to a total of 40 hours of paid sick leave per "calendar year" (which can be a calendar year, fiscal year, anniversary year, as determined by the employer). Employers with less than five employees must provide employees with unpaid sick leave, and most employers with one or more domestic workers must provide two days of paid sick leave (in addition to the three days of paid rest provided to domestic workers under the New York State Labor Law). Employees may use sick leave for their own care and treatment, or for the care and treatment of a "family member" (as defined under the Act).

Employees start to accrue sick leave pursuant to the Act on April 1, 2014 (or when hired, if hired after April 1). Employees may use accrued sick leave beginning on the later of July 30, 2014 or 120 days after their hire date and, after such 120 days, may use sick leave as it accrues. Employers may require that sick leave be used in reasonable minimum increments, but the minimum increment required generally cannot be more than four hours per day. The Act requires employers to permit up to 40 hours of unused sick leave to be carried over to the next calendar year, but employers are only required to allow employees to use up to 40 hours of paid sick leave per calendar year. Employers also are not required to pay employees for accrued but unused sick leave upon termination of employment. Employers may satisfy the requirements of the Act with their existing sick leave or other paid time off policy (e.g., vacation policy), as long as the time off offered pursuant to such policies meets or exceeds the requirements of the Act and may be used for the same sick leave purposes as provided for in the Act.

The Act only permits employers to require a note from an employee's health care provider for taking sick leave if the employee uses sick leave for more than three consecutive work days, in which case the employer can require the health care provider to confirm the need for the amount of sick leave taken but not to specify the medical reason for such leave

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(unless disclosure is required by other laws). The Act also provides that it is illegal for an employer to retaliate against an employee for requesting or using sick leave, though an employee may be disciplined for misusing sick leave.

Employers must provide written notice to employees of their rights under the Act to new employees when they begin employment and to existing employees by May 1, 2014. The notice must include information regarding (i) accrual and use of sick leave, (ii) the employer's calendar year, (iii) the right to be free from retaliation and (iv) the right to file a complaint regarding violations of the Act. The notice must be provided to employees in English and, if available on the DCA website, in the employee's primary language. Employers are also encouraged, but not required, to post the notice in the workplace, but this cannot take the place of providing an individual notice to each employee. The sample notice may be found here.

Reasonable Accommodation for Pregnant Employees

Effective earlier this year, New York City employers with four or more employees (which includes independent contractors who are natural persons) must provide "reasonable accommodation" to employees based on pregnancy, childbirth or related medical conditions, provided that such pregnancy, childbirth or related medical conditions are known or should have been known by the employers. Such a reasonable accommodation must not constitute an "undue hardship" and may include, without limitation, "bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things."

Covered employers must provide written notice of this requirement in the form provided by the New York City Commission on Human Rights to new employees at the commencement of their employment and by May 30, 2014 to all current employees. The amendment states that employers may also post the notice in a conspicuous place but does not require employers to do so. The notice is available here.

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