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CONFIDENTIAL ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM

DATE: July 1, 2013

TO: New York City Employers

FROM: Kane Kessler, P.C.
[Labor and Employment Law Department](#)

RE: The New York City Sick Leave Act

On June 27, 2013, the New York City Council overrode Mayor Bloomberg's veto of the Sick Leave Act (the "Act"). Therefore, after much political wrangling and a compromise addressing economic concerns which could delay the effective date, employers in New York City will be required to provide a minimum number of sick days per calendar year beginning as early as April 1, 2014.

The Act provides that all employers with 15 or more employees must provide a minimum amount of paid sick leave and all employees with fewer than 15 employees must provide a minimum amount of unpaid sick leave. For purposes of the Act, the number of employees employed by an employer includes all full-time, part-time and temporary employees (exempt and non-exempt). Where the number of employees fluctuates, the number will be determined by looking at the average number of employees per week over the preceding calendar year.

Under the Act, sick leave –whether paid or unpaid – will accrue at the rate of one hour per every 30 hours of work, up to a maximum of 40 hours (typically 5 days) per calendar year. For exempt employees, it will be presumed that employees work 40 hours per week for the purposes of calculating accrual of sick leave, unless they regularly work less than 40 hours per week. All time off, including vacation, personal days and similar time off, will count towards the minimum number of sick leave days provided by the employer. Sick leave begins to accrue on the first day of employment but an employer can prohibits its use until after the 120th day of employment.

Employers are not required to pay unused, accrued sick pay upon termination of employment. Unused sick leave can be carried over to the succeeding calendar year, but no employer is required to grant more than 40 hours of sick leave in any calendar year.

Sick leave (whether paid or unpaid) can be used for an employee's own illness, medical treatment or preventative medical care or to care for a family member who is ill, requires treatment or preventative medical care. A "family member" is a child, spouse, domestic partner, parent or in-law (including a parent of a domestic partner). Sick leave can also be used in the event the place of employment or the employee's child's school is closed due to a public health emergency. If leave is foreseeable, employees are required to give "reasonable" advance notice and when not foreseeable, as much notice as is practicable under the circumstances. Employees can be disciplined for using sick leave for purposes other than those intended by the Act. An employer may request medical documentation for an absence of more than 3 consecutive days. However, employees are not required to disclose the nature of their medical condition as a condition of obtaining sick leave.

Employees covered by a collective bargaining agreement (except in the construction and grocery industries) are exempt from the provisions of this Act provided that (1) the collective bargaining agreement expressly waives the provisions of this Act and (2) the collective bargaining agreement provides comparable benefits (including all forms of paid leave).

The Act prohibits retaliation against employees who request sick leave or complain about violations of the Act. All employees must receive a notice in writing at the commencement of their employment explaining their rights to sick leave. The notice, a form of which will be drafted by the Department of Labor ("DOL"), must be in the employee's primary language, provided it is one of seven (7) languages in which the DOL will prepare forms of notice. Records of sick leave use must be maintained for two (2) years.

The Act does not provide for a private right of action for violations of its provisions. However, employees may file complaints with the DOL within 270 days of a violation. If an employee is not compensated for sick time, DOL can impose a penalty of 3 times the unpaid wages plus \$250 per violation. Penalties for failure to provide sick leave, retaliation and unlawful discharge range from \$500 to \$2,500 per violation, plus full back pay and possible reinstatement in the event of discharge.

Due to the concern of some lawmakers about the effect of the Act on current economic conditions in New York City, the effective date of the Act is rather complicated. If on December 16, 2013, the Independent Budget Office ("IBO") determines that the most recent New York City Coincidental Economic Index (the "Index") as published by the Federal Reserve of New York is at or above the January 2012 level, then the effective dates for the Act are:

- For employer with 20 or more employees – April 1, 2014
- For employers with 15 -19 employees – October 1, 2015
- For employers with fewer than 15 employers who are required to provide unpaid leave – April 1, 2014.

If the Index is not at the January 2012 level on December 16, 2013, then the effective dates are:

- For employers with 20 or more employees – October 1, 2014
- For employers with 15-19 employers – April 1, 2016
- For unpaid leave – October 1, 2014

If on June 16, 2014, the Index is not at the January 2012 level but it is on December 16, 2014, then the effective dates are:

- For employers with 20 or more employers – April 1, 2015
- For employers with 15-19 employees – October 1, 2016
- For unpaid leave – April 1, 2015

If the Index is not at the January 2012 level on December 16, 2014, then the IBO shall make a determination every June and December and the effective date shall be the succeeding October or April, respectively, after the Index first reaches the January 2012 level.

Finally, for employees covered by a collective bargaining agreement in effect on the effective date above, then the Act takes effect upon the expiration of the collective bargaining agreement.

We will keep our clients informed of the effective dates as they become known.

If you have any questions about the Sick Leave Act, please do not hesitate to contact [David Rothfeld](#), [Judith Stoll](#), [Lois Traub](#), [Niki Franzitta](#), [Robert Sacks](#) or [Alexander Soric](#) of the Firm's Labor & Employment practice group.