

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

DATE: November 15, 2017
TO: New York Clients
FROM: Kane Kessler, P.C.
Labor and Employment Law Department
RE: Mayor de Blasio Amends the Earned Sick Time Act to Include “Safe” Time

On November 6, 2017, Mayor Bill de Blasio signed into law an amendment to the Earned Sick Time Act that allows eligible employees of New York City employers to use earned time off for reasons related to their own or a covered family member’s status as a victim of a family offense, sexual offense, stalking, or human trafficking (collectively, “safe time”). Effective 180 days after the enactment of the amended law (*i.e.*, **May 5, 2018**), the Earned Sick Time Act has now been renamed the Earned Safe and Sick Time Act (“ESSTA”).

Enacted in 2014, the Sick Time Act allowed employees up to 40 hours of paid sick leave annually to care for themselves or family members. The ESSTA also broadens the definition of “family member” to include “any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.”

The Amendments

The amended law defines sexual offenses, stalking, human trafficking, and other family offense matters by reference to the New York Penal Law:

- “Human trafficking” includes sex trafficking and labor trafficking, and
- “Family offense matter” includes acts or threats of acts that may constitute offenses such as disorderly conduct, harassment, reckless endangerment, assault and identity theft between spouses or ex-spouses, parent and child, or members of the same family or household.

“Member of the same family or household” is defined as: (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

In addition to the permitted uses of earned sick time under the law, eligible employees would be able to use safe time under the amended law for specified reasons. When an employee or the employee’s family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking, the employee will be eligible to use paid sick/safe time off from work for the following reasons:

- 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,
- 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,
- 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,
- File a complaint or domestic incident report with law enforcement,
- Meet with a district attorney’s office,
- Enroll children in a new school, or
- 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.

Documentation

Similar to the use of paid sick leave, for an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized. Documentation signed by an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee’s family member has sought assistance in addressing family offense matters, sex offenses, stalking, or human trafficking and their effects; a police or court record; or a notarized letter from the employee explaining the need for such

time is reasonable documentation and an employer cannot require that such documentation specify the details of the family offense matter, sexual offense, stalking, or human trafficking.

Next Steps

Employers will have to revise their handbooks, policies and practices with respect to paid sick time to now include paid “safe” time leave. Employers are also obligated to provide notice to employees of their right to safe time under the ESSTA. The amended law specifically requires employers to give employees who have already received notice of their right to sick time notice of their right to safe time within thirty days of the effective date of the ESSTA.

If you have any questions or need assistance in revising your handbook or policies, please do not hesitate to contact David R. Rothfeld, Lois M. Traub, Alexander Soric, Robert L. Sacks, Michael Lydakis, Jennifer Schmalz or Jaclyn Ruocco.

*This memo is provided for informational purposes only.
It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.*