

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED MEMORANDUM

DATE: May 22, 2018

TO: New York Clients

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

RE: New York City Publishes New Earned Sick and Safe Time Act Poster To Be Distributed to Employees

As we reported in a client memorandum attached here for reference, 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"). The amendment took effect on May 5, 2018. The Earned Sick Time Act has now been renamed the Earned Safe and Sick Time Act ("ESSTA") and the New York City Department of Consumer Affairs has issued a revised Notice of Employee Rights poster, attached here, that employers are required to distribute to employees. As a reminder, ESSTA's paid sick time applies to employees in their first year of employment, provided that they meet the hours requirement.

Employers should replace the prior Notice of Employee Rights poster under the Earned Sick Time Act with the revised notice under ESSTA and **post** it in a common area where employees gather. Employers are also required to **distribute** this revised poster to all new employees going forward and to all current employees by **June 4, 2018**. The notice must be provided in English or the employee's primary language if not English (and provided the City creates a notice in such language). Currently, the revised Notice of Rights is only available in English. **It should be provided to all employees, regardless of their primary language.** The New York City Department of Consumer Affairs ("DCA") will issue the revised Notice of Rights in other languages shortly. We will keep you updated when the DCA does so, and such notices should be distributed to all employees as appropriate based upon the employees' primary language.

Employers should also update their policies and procedures pertaining to sick time to indicate that time may be taken for "safe time".

We are available to assist you in revising your handbook or policies, conducting training, or answering any questions that you may have. 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.

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.

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It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.*



Bill de Blasio
Mayor

Consumer
Affairs

Lorelei Salas
Commissioner

NOTICE OF EMPLOYEE RIGHTS

Under New York City's Earned Safe and Sick Time Act (Paid Safe and Sick Leave Law), certain employees have a right to safe and sick leave. Go to nyc.gov/PaidSickLeave to learn which employees are covered by the law.

Employees who work for employers with five or more employees who work more than 80 hours a calendar year in New York City have a right to *paid* safe and sick leave. Employees who work for employers with fewer than five employees have a right to *unpaid* safe and sick leave.

Employees who work for employers who must provide safe and sick leave must receive this written notice from their employer when they begin employment or by June 4, 2018, whichever is later.

YOU HAVE A RIGHT TO SAFE LEAVE, which you can use to seek assistance or take other safety measures if you or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking.

YOU HAVE A RIGHT TO SICK LEAVE, which you can use for the care and treatment of yourself or a family member.

AMOUNT OF SAFE AND SICK LEAVE:

- Your employer must provide up to a total of 40 hours of safe and sick leave every calendar year. You may use any earned leave for either safe or sick leave purposes. Your employer's calendar year is:

Start of Calendar Year: _____ End of Calendar Year: _____

RATE OF ACCRUAL:

- You accrue safe and sick leave at the rate of one hour for every 30 hours worked, up to a maximum of 40 hours of safe and sick leave per calendar year.

DATE ACCRUAL BEGINS:

You begin to accrue safe and sick leave on April 1, 2014 or on your first day of employment, whichever is later.

Exception: If you are covered by a collective bargaining agreement that was in effect on April 1, 2014, you begin to accrue safe and sick leave under City law beginning on the date that the agreement expires.

DATE SAFE AND SICK LEAVE IS AVAILABLE FOR USE:

- You could begin using sick leave on July 30, 2014 or 120 days after you begin employment, whichever is later.
- You could begin using safe leave on May 5, 2018 or 120 days after you begin employment, whichever is later.

ACCEPTABLE REASONS TO USE SAFE AND SICK LEAVE:

You can use safe and sick leave to take time off from work when:

- You have a mental or physical illness, injury, or health condition; you need to get a medical diagnosis, care, or treatment of your mental or physical illness, injury, or condition; you need to get preventive medical care.
- You must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventive medical care.
- Your employer's business closes due to a public health emergency or you need to care for a child whose school or child care provider closed due to a public health emergency.
- You or a family member may be the victim of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking and you need to take actions necessary to restore the physical, psychological, or economic health or safety of you or your family members or to protect those who associate or work with you, including to:
 - Obtain services from a domestic violence shelter, rape crisis center, or other services program.
 - Participate in safety planning, relocate, or take other actions to protect your safety or that of your family members, including enrolling children in a new school.
 - Meet with an attorney or social service provider to obtain information and advice related to custody; visitation; matrimonial issues; orders of protection; immigration; housing; discrimination in employment, housing, or consumer credit.
 - File a domestic incident report with law enforcement or meet with a district attorney's office.

FAMILY MEMBERS:

The law recognizes the following individuals as “family members:”

- Any individual whose close association with the employee is the equivalent of family
- Child (biological, adopted, or foster child; legal ward; child of an employee standing *in loco parentis*)
- Grandchild
- Spouse
- Domestic Partner
- Parent
- Grandparent
- Child or Parent of an employee's spouse or domestic partner
- Sibling (including a half, adopted, or step sibling)
- Any other individual related by blood to the employee

ADVANCE NOTICE:

If the need is foreseeable, your employer can require up to seven days advance notice of your intention to use safe or sick leave. If the need is unforeseeable, your employer may require you to give notice as soon as practicable.

DOCUMENTATION:

Your employer can require documentation if you use more than three consecutive workdays as safe or sick leave. The Paid Safe and Sick Leave Law prohibits employers from requiring the health care provider to specify the medical reason for sick leave or requiring safe leave documentation to specify the details of any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking. Disclosure may be required by other laws.

UNUSED SAFE AND SICK LEAVE:

Up to 40 hours of unused safe and sick leave can be carried over to the next calendar year. However, your employer is only required to let you use up to 40 hours of safe and sick leave per calendar year.

YOU HAVE A RIGHT TO BE FREE FROM RETALIATION FROM YOUR EMPLOYER FOR USING SAFE AND SICK LEAVE.

Your employer cannot retaliate against you for:

- Requesting and using safe and sick leave.
- Filing a complaint for alleged violations of the law with DCA.
- Communicating with any person, including coworkers, about any violation of the law.
- Participating in a court proceeding regarding an alleged violation of the law.
- Informing another person of that person's potential rights.

Retaliation includes any threat, discipline, discharge, demotion, suspension, or reduction in your hours, or any other adverse employment action against you for exercising or attempting to exercise any right guaranteed under the law.

YOU HAVE A RIGHT TO FILE A COMPLAINT.

You can file a complaint with DCA. To get the complaint form, go online to nyc.gov/PaidSickLeave or contact 311 (212-NEW-YORK outside NYC).

DCA will conduct an investigation and try to resolve your complaint. DCA will keep your identity confidential unless disclosure is necessary to conduct the investigation, resolve the complaint, or is required by law.

Keep a copy of this notice and all documents that show your amount of safe and sick leave accrual and use.

Note: The Earned Safe and Sick Time Act sets the minimum requirements for safe and sick leave. Your employer's leave policies may already meet or exceed the requirements of the law.

You have a right to be given this notice in English and, if available on the DCA website, your primary language.

For more information, including Frequently Asked Questions, go to nyc.gov/PaidSickLeave or call 311 and ask for information about Paid Safe and Sick Leave.