



KD Alert: New NYC Earned Sick Time Law To Require Additional Benefits for Employees

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Today, the New York City Council passed an amended version of the Earned Sick Time Act ("Act"). Provided that Mayor de Blasio signs the bill into law, which is widely anticipated, the Act will go into effect on April 1, 2014. It will require most private New York City employers to provide their employees with at least 40 hours of paid sick time each year. The following questions and answers are intended to provide employers with general guidance on the Act.

Is my business covered by the Act?

New York City private employers with five or more employees are covered by the Act. Under the Act, "employees" include all full-time, part-time, and temporary workers who work at least 80 hours per year.

If my business already offers paid time off to employees, is the business required to provide them with an additional 40 hours of paid sick time?

It depends. Employers who provide employees with paid time off sufficient to meet the requirements of the Act are not required to provide additional paid sick time. However, because the Act contains very specific requirements, like those dealing with accrual methods and permitted uses of the benefit, employers who provide 40 hours of paid time off will likely still need to revise their policies and procedures to comply with the Act.

Do employees have to be sick in order to use paid sick time?

No, employees can use paid sick time for their own illness or preventative medical care. They can also use it to care for family members who are sick, or who are receiving preventative medical care. In addition, employees can use paid sick time if their employer is closed due to a public health emergency, or to care for a child whose school or daycare is closed due to a public health emergency.

Can employees who use their sick time for unauthorized purposes be disciplined?

Yes, the Act permits employers to discipline employees who use sick time for unauthorized purposes, up to and including termination. However, the Act subjects employers to significant liability for such discipline if it is deemed retaliatory. Employers could potentially be liable for back pay, a \$2,500 penalty, and civil penalties, and could be required to reinstate the employee.

Are there any other penalties for violating the Act?

Yes, employers may be subject to civil penalties, required to be paid to the employee, and other penalties payable to the City, each time they fail to pay an employee sick time, deny an employee requested sick time, fail to provide employees with required notices, or otherwise violate the Act.

Are all employees entitled to use 40 hours of paid sick time as of April 1, 2014?

No, current employees begin to accrue paid sick time on April 1, 2014, but cannot begin using it until July 30, 2014. Employees hired after April 1, 2014 begin to accrue paid sick time at the commencement of employment, but cannot begin using it until 120 days later.

How do employees accrue paid sick time?

Employees accrue paid sick time at a rate of one hour of paid sick time for every 30 hours worked, to a maximum of 40 hours per year. Exempt employees are assumed to work 40 hours per week, and will accrue time accordingly. However, if an exempt employee does not regularly work at least 40 hours per week, their hours will have to be tracked, and sick time will accrue as set forth.

Can employees be required to provide documentation to prove that they are entitled to paid sick time?

Yes, but only on a limited basis (unless otherwise required by law). Employers can require employees to “provide written confirmation” that they used the paid sick time for a permissible purpose. However, an employer cannot require a doctor's note until after an employee has used paid sick time for more than three consecutive work days. And, in no event can an employer require that documentation specify the nature of the illness suffered by the employee or his family member.

Do employees carry over unused sick time from one year to the next?

Yes, unless the employer pays them for any unused sick time at year end.

Are there any notice or recordkeeping requirements under the Act?

Yes, employers must give all employees written notice of their rights under the Act at the beginning of their employment. All records regarding the Act must be maintained for three years.

Employers, including those who already offer 40 hours of paid time off, should revise their policies to comply with the Act's specific requirements regarding the benefit, accrual method, and notice requirements. KD attorneys are available to assist employers with updating policies, training managers on administering the law, and any other compliance matters.