

Significant Changes to New York City's Earned Safe and Sick Time Act (ESSTA)

New York City recently implemented significant changes to the City's Earned Safe and Sick Time Act (ESSTA). The changes were meant to better-align the City law with New York State's Paid Sick Leave Law, such that both policies now require employers of the same size to provide the same amount and type of sick leave. Specifically, the law provides as follows:

- Employers with 4 or fewer employees and a net income of less than \$1 million must provide up to 40 hours of unpaid safe and sick leave to their employees.
- Employers with 4 or fewer employees and a net income of more than \$1 million must provide up to 40 hours of paid safe and sick leave.
- Employers with 11 to 99 employees, irrespective of net income, must provide up to 40 hours of paid safe and sick leave.
- Employers with 100 or more employees, irrespective of net income, must provide up to 56 hours of paid safe and sick leave.

Employees will continue to accrue one hour of safe and sick leave for every 30 hours worked, up to a maximum of 40 accrued hours in a calendar year.

No More 120-Day Waiting Period

Initially, ESSTA allowed employers to prohibit employees from using accrued safe and sick leave until after 120-days of employment. The recent amendment removed the 120-day waiting period and employers are now required to allow employees to use their safe and sick time as it is accrued.

Two important caveats:

- Small employers with 4 or fewer employees and a net income of less than \$1million may continue to impose the 120-day waiting period until January 1, 2021. After that date, small employers must allow employees to use safe and sick time as it is accrued.
- Large employers with 100 or more employees must allow employees to use the first 40 hours of safe and sick time as it is accrued but may continue to impose the 120-day waiting period *only for the additional 16 hours of accrued leave until January 1, 2021. After that date, large employers must allow employees to use all 56 hours of safe and sick time as it is accrued.*

ESSTA Eligibility Is No Longer Conditioned Upon Working At Least 80 Hours in The City

ESSTA previously provided that an employee had to work at least 80 hours per calendar year within New York City to be eligible for safe and sick leave. The recent ESSTA amendments removed that requirement. Now, all individuals employed within the City are eligible for safe and sick leave.

Employers Must Pay the Costs of Employee Proof of Eligibility

Employers may request verification for safe and sick leave if the employee takes three or more consecutive workdays of leave. However, the ESSTA amendments now require employers to reimburse employees who must pay for any required documentation to demonstrate a verified use of leave.

Significant Changes to ESSTA Notice Requirements

- **Paystubs** – Employers must now inform employees of accruals and usage of safe and sick leave with each pay period. Specifically, the employer must identify the amount of safe and sick leave accrued and used during each pay period, as well as state the employee's total balance of accrued leave. This information may be provided to the employees on a paystub or on any other form of written documentation so long as it is provided to employees with each pay period. The NYC Department of Consumer and Worker Protection has indicated that employers may have up to November 30, 2020 to ensure compliance with this specific notice requirement without penalty, so long as they are working in good faith to implement this requirement.
- **Posters** – Employers are now required to conspicuously post the notice of rights under ESSTA in the workplace in an area accessible to all employees. Posting was previously optional.
- **Policies** – Employers must provide new hires with a notice of rights under ESSTA at the commencement of their employment. Employers with 100 or more employees or employers of domestic workers must also provide existing employees with an updated notice of the changes made by the recent ESSTA amendments by January 1, 2021. The New York City Department of Consumer Affairs has provided a model Notice of Employee Rights in English and in Spanish, which is available [here](#).

Any subsequent amendment to the New York State Paid Sick Leave Law relating to the standards or minimum requirements for use of sick leave will also be incorporated by reference into ESSTA.

KD IS HERE TO HELP

New York City employers should immediately update their handbooks to ensure compliance with ESSTA's use, accrual, and carry-over requirements, to remove any waiting periods for use of safe and sick time, and to conform with all other amendments to the law. Employers should also make the necessary arrangements with their payroll providers to include safe and sick leave accrual and usage information in employee paystubs.

While employers may be feeling overwhelmed with the numerous compliance challenges brought about in 2020, the experienced Labor and Employment attorneys at Kaufman Dolowich & Voluck are available to assist. For more information, please contact an experienced member of KD's Labor and Employment Law Practice Group.