

UPDATED: NYC Council Passes Bill to Align ESSTA with New York State Paid Sick Leave Law

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***** UPDATE: Mayor de Blasio signed the bill into law on September 28, and it will take effect on September 30, 2020, except as otherwise set forth below.**

The New York City Council has [passed a bill](#) aimed at aligning the NYC Earned Safe and Sick Time Act (ESSTA) with the [New York State paid sick leave law](#) that takes effect on September 30, 2020. The bill would also impose a new requirement on employers to report the amount of paid sick and safe leave accrued and used during each pay period, as well as an employee's total balance of ESSTA leave, on a pay statement or other document provided to the employee each pay period.

The bill includes an effective date of September 30, though employers would be permitted to restrict employees from using any additional paid sick and safe leave provided under the law (discussed further below) until January 1, 2021.

Among its key provisions, the bill would amend the amount of sick and safe leave that employers must provide under ESSTA to mirror that under the recently passed State sick leave law. That is:

- employers with 4 or fewer employees and a net income of less than \$1 million in the prior tax year would be required to provide employees with up to **40 hours of unpaid** sick and safe leave;
- employers with between 5 and 99 employees and employers with 4 or fewer employees and a net income of greater than \$1 million in the prior tax year would be required to provide each employee with up to **40 hours of paid** sick and safe leave per year; and
- employers with 100 or more employees would be required to provide up to **56 hours of paid** sick and safe leave per year.

Under the present (and initial) iteration of ESSTA, all employers must provide up to 40 hours of either paid or unpaid sick and safe leave, depending on number of employees. The bill would also eliminate ESSTA's current 120 day waiting period for newly hired employees to be able to utilize accrued leave.

Other changes under the bill include:

- requiring an employer to cover any cost charged by a health care provider or other entity for providing a doctor's note or other documentation to support the need for leave under ESSTA;
- expanding upon the definition of prohibited "adverse action" taken against an employee for exercising or attempting to exercise rights under the law or interfering with an employee's exercise of rights under law and its implementing rules;
- requiring employers provide notice to employees of the changes under the law within 30 days of the bill's effective date if passed into law; and
- **notably**, creating a requirement that "the amount of safe/sick time accrued and used during a pay period and an employee's total balance of accrued safe/sick time shall be noted on a pay statement or other form of written documentation provided to the employee each pay period."

With regard to enforcement, the bill states that if the New York state paid sick leave law or any regulation issued thereunder "sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in this chapter, such standard or requirement shall be incorporated by reference and shall be enforceable by the [Department of Consumer and Worker Protection]," which is the City entity that presently enforces ESSTA. In addition, the bill would authorize the City's corporation counsel to investigate and bring civil actions for "pattern or practice" violations under the law, and would incorporate new civil penalties of up to \$15,000 (as well as individual relief of up to \$500 to each employee impacted) associated with such a civil action.

The bill is now before Mayor Bill de Blasio for consideration, and the Mayor has scheduled a hearing on the bill for September 28. We will continue to monitor and report on developments with regard to this bill.

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