

Labor & Employment News Alert

April 10, 2014

New York City's New Sick Time Law

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General Provisions

Under the Act, private employers with five (5) or more employees must now provide paid sick time to their employees. Specifically, employers covered under the Act are now required to provide a minimum of one (1) hour of paid sick time for every thirty (30) hours worked by an employee, subject to a cap of forty (40) sick time hours per calendar year. "Sick time" includes absence from work due to: (1) an employee's or a family member's¹ mental or physical illness, injury or health condition or need for preventative care; and (2) the closure of an employee's place of business by a public official due to a public health emergency or the employee's need to care for a child whose school or childcare has been closed for the same reason. The term "employee" as used in the Act generally encompasses individuals who are employed either full-time or part-time who work within New York City for more than eighty (80) hours in a given calendar year.

Regarding the use and accrual of sick time, sick time begins to accrue at either the commencement of an employee's employment or April 1, 2014, whichever is later, and employees may start to use accrued sick time either 120 days after the commencement of their employment or April 1, 2014, whichever is later. While employers may require up to seven (7) days' notice of an employee's need to use sick time, where that need was not foreseeable, employers may only require that notice be given as soon as may be practicable. Employers may, however, establish reasonable minimum increments in which sick time may be used. Such minimum increments cannot exceed four (4) hours per day.

Pursuant to the Act, at the end of the calendar year, employees may carry over to the next year accrued, but unused, sick time. However, the 40-hour-per-calendar-year cap still applies. In lieu of this carryover, Employers may pay employees for their accrued, but unused, sick days. The Act does not, however, create an obligation to pay out accrued, but unused, sick leave time upon the termination of an employee's employment.

Notice Requirements, Recordkeeping, and Penalties

The Act requires that covered employers provide their employees with written notice of their right to use sick leave under the Act. This notice must include information regarding the accrual and use of sick time, the "year" according to which the employer operates, the employee's right to raise a complaint, and the employee's protection against retaliation. This notice must be written in English, and if applicable, the employee's primary language. Employers must retain for three (3) years records documenting their compliance with the Act.

The Act provides that the Department of Consumer Affairs or another Mayor-appointed agency (an "Enforcing Agency") will enforce the provisions of the Act. The Enforcing Agency has the power to investigate complaints, conduct investigations, and promulgate rules under the Act. In the event of a finding that an employer has violated the Act, the Enforcing Agency may impose civil penalties, in addition to equitable relief or money damages. These damages and penalties may include, for example, \$500 for unlawfully-denied sick leave or, in the instance of an employee who is discharged in violation of the Act, \$2,500 plus full compensation for lost wages and benefits.

Notably, manufacturing employers and employers with fewer than twenty (20) employees are subject to an enforcement "grace period" through October 1, 2014. During this grace period, first-time violations will not trigger a civil penalty, but could still result in equitable remedies. A second violation during the grace period can trigger a civil money penalty.

Important Notes

- **Unionized Employers** – Employers who are subject to pending collective bargaining agreements (a "CBA") as of April 1, 2014 are only subject to the Act as of the expiration date of the CBA. Subject

to certain conditions, the provisions of post-April 1, 2014 CBAs can waive or forego the provisions of the Act. In such an instance, the CBA must provide for comparable benefits, such as paid time off or holiday or Sunday time paid at premium rates.

- **Manufacturing Employees** – Importantly, while the previous incarnation of the Act exempted manufacturing employees from its coverage, this is no longer the case.
- **Non-Covered Employers** – Employers who do not fall within the provisions of the Act – for example, employers with less than five (5) employees – must still provide sick leave in accordance with the above-noted specifications. However, this sick leave time may be unpaid.
- **Domestic Workers** – The Act contains specific provisions – and, in certain respects, exceptions – pertaining to employers of one (1) or more domestic workers.

Given the Act's various new requirements, it is important for New York City employers to update their policies and recordkeeping practices, in addition to providing notice to their employees of their rights under the Act. If you have any questions about, or would like to discuss, your company's obligations under the Act, please feel free to contact a **Venable New York Labor & Employment attorney**.

¹The Act adds "grandchild or grandparent" to an already-existing list which includes the employee's child, spouse, domestic partner, parent sibling or the parent of an employee's spouse or domestic partner. The Act also adds "siblings related through adoption" to the previous definition of "sibling," which includes the employee's brother or sister, including half-siblings and step-siblings.