EMPLOYMENT LAW ALERT
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NYC's New Sick Leave Rules Are Here - Is Your Business Ready?

New York City employers face a new—and more demanding—leave compliance landscape. Effective July 23, 2026, the Department of Consumer and Worker Protection's final rules implementing recent amendments to the New York City Earned Safe and Sick Time Act ("ESSTA") provide detailed guidance concerning protected time off, paid prenatal leave, employee notices, and recordkeeping.

The final rules follow amendments made by Local Law 145 of 2025, which expanded the reasons employees may use protected time off, added a new bank of immediately available unpaid safe and sick leave, and incorporated paid prenatal leave requirements into the New York City Administrative Code.

"Protected Time Off"

The final rules replace many references to "safe/sick time" with the broader term "protected time off." Protected time off includes both paid and unpaid time off that may be used for reasons covered by ESSTA.

In addition to existing safe and sick leave reasons, employees may now use protected time off for several additional purposes, including:

- Caring for a child or care recipient;
- Attending legal proceedings or taking other actions related to subsistence benefits or housing;
- Responding to a public disaster; and
- Responding to workplace violence.

Employers should ensure that their written policies reflect these expanded uses and do not limit protected time off to only traditional sick leave or safe leave purposes.

32-Hours of Unpaid Leave Immediately Available

The final rules require employers to provide employees with at least 32 hours of additional unpaid protected time off that is immediately available on the employee's first day of employment and on the first day of each calendar year.

Although the 32-hour bank may be unpaid, the final rules allow employers to satisfy the requirement by providing some or all of the immediately available time as paid time off, so long as the time is immediately available and may be used for all purposes required by ESSTA.

Interaction With Existing Paid Leave Policies

Employers should not assume that any existing paid time off or sick leave policy automatically satisfies the new 32-hour requirement. The policy should be reviewed to confirm that the required time is immediately available and usable for all protected purposes under ESSTA.

The final rules also confirm that providing the 32 immediately available hours as paid leave does not eliminate an employer's separate obligation to provide 40 (or 56 hours for large employers) of paid protected time off through accrual or frontloading, as applicable.

Part-Time Employees, Mid-Year Hires, and Rehires

For part-time employees and employees hired mid-year, the rules do not provide for prorating the 32-hour entitlement. Employers should therefore account for the full 32-hour bank when onboarding new employees or administering leave for part-time employees. Notably, the unpaid leave bank does not carry over from year to year, but if an employee separates from employment and is rehired within the same calendar year, the employer must reinstate the unused portion of those hours.

Use of Paid Leave Before Unpaid Leave

Employers must also account for how leave is applied when an employee has both paid and unpaid protected time off available. In that circumstance, the employer generally must apply paid protected time off first, unless the employee requests to draw from the unpaid bank instead. Employers should therefore review payroll and leave-administration systems to ensure that paid and unpaid protected time off banks are tracked separately and applied correctly.

Exempt Employees

The final rules include an important clarification for exempt employees. Although the 32-hour leave bank may be unpaid, employers should pay exempt employees for such time when treating the leave as unpaid would conflict with other wage-and-hour requirements or risk undermining the employee's exempt status, including under the Fair Labor Standards Act salary-basis test.

This issue may arise, for example, where a salaried exempt employee works part of the day and uses protected time off for the remainder of the day. Employers must carefully consider whether making salary deductions for time off would jeopardize an exempt employee's classification. Improper deductions may create wage-and-hour risk that reaches far beyond ESSTA compliance.

Written Policy Requirements

The final rules require employers to maintain written protected time off and paid prenatal leave policies in a single writing. Employers must distribute those policies to employees upon commencement of employment, within 14 days of any policy change, and upon employee request.

The written policy must address, among other things:

- Whether protected time off is accrued or frontloaded;
- The amount of immediately available protected time off provided;
- The availability of paid prenatal leave;
- Employee notice procedures;
- Documentation requirements;
- Minimum increments for use;
- Carryover rules;
- Any discipline policy for misuse of protected time off or paid prenatal leave;
- A confidentiality statement confirming the employer will not ask employees to provide details about their medical condition or other situation that led to the use of protected time off or paid prenatal leave, and that any information received will be kept confidential; and
- If the employer uses alternative terminology such as "PTO" or "vacation time," to satisfy its obligations under ESSTA, a statement that such leave may be used for any purpose authorized under ESSTA.

In addition, employers must separately distribute a Notice of Rights under ESSTA as required by Section 20-919 of the Administrative Code. The Notice of Rights is distinct from the employer's written policy, and neither document may substitute for the other.

Pay Statement and Recordkeeping Updates

The final rules also update pay statement and recordkeeping obligations. For each pay period, employers must provide information concerning protected time off accrued and used during the pay period, as well as total balances available for use, differentiating between paid and unpaid protected time off. Employers must also provide information regarding paid prenatal leave usage and balances, when applicable.

Employers must retain records demonstrating compliance with ESSTA for a period of three years. This includes employee contact information, dates of employment, rate of pay, exempt status, hours worked, dates and times of each use of protected time off and paid prenatal leave, amounts paid for each instance, and proof that the Notice of Rights was provided and received.

Post-Employment Access to Leave Information

For employers that use electronic systems to issue pay statements or leave-balance information, the final rules add a post-employment obligation.

When an employee's employment ends, the employer must either:

- Continue to provide the former employee access to the electronic system for six months; or
- Provide the employee with a written statement containing the required leave information for the employee's last pay period no later than one week following the employee's last payday.

Employers that routinely terminate access to payroll or HR systems immediately upon separation should review their offboarding procedures to ensure compliance with this requirement.

Documentation Reimbursement

If an employer requires documentation for use of protected time off for sick purposes or for paid prenatal leave, and a licensed health care provider charges the employee a fee for providing such documentation, the employer must reimburse the employee for that fee. Similarly, if an employer requires documentation for safe time, the employer must reimburse the employee for all reasonable costs or expenses incurred in obtaining such documentation. In addition, employers must remain cognizant of the other requirements imposed by the law for seeking such documentation from an employee.

Paid Prenatal Leave

The final rules also incorporate already existing paid prenatal leave. Employers covered by ESSTA must allow employees to use, and receive pay for, up to 20 hours of paid prenatal leave during any 52-week calendar period, in addition to protected time off provided under ESSTA.

The final rules further state that employers may not require an employee to use other leave before using paid prenatal leave, or to exhaust paid prenatal leave before using other available leave, unless the employee specifically requests to use other leave instead.

Penalties and Employee Relief

If DCWP finds that an employer has an official or unofficial policy or practice of not providing or refusing to allow the use of protected time off, the employer is subject to penalties and must provide relief to affected employees. This relief includes restoration of the protected time off hours the employee should have accrued, application of 32 hours of unpaid protected time off, and monetary relief in the amount of $500 per employee per calendar year the policy or practice was in effect. Similar relief applies for violations related to paid prenatal leave.

Employers located in or with employees working in New York City should review their leave policies, payroll systems, and offboarding procedures to ensure they reflect the final rules. For guidance in navigating these new requirements, or with any other employment law matters, please contact:

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