
New York City Employers & Obligatory Paid Sick Days

New York City's "Earned Sick Time Act," N.Y.C. Admin. Code §§ 20-911 et seq., is nearing its second anniversary as law for New York City employers. Since the law took effect in April 2014, the Department of Consumer Affairs ("DCA"), the city agency charged with enforcing the law, has conducted nearly 600 investigations of employer violations of the law, the vast majority of which have settled.¹

The Earned Sick Time Act provides that most employers in New York City must provide their full-time employees with 40 hours per year of sick time. New York City employers with 4 or fewer employees may provide sick time without pay, but those with 5 or more employees must provide paid sick time. (Different rules apply to domestic employees, and some types of employees are not covered at all.) Employees accrue sick time at the rate of one hour for every 30 hours worked. Part-time employees accrue paid sick time at the same rate but, as a practical matter, will likely not accrue the same amount annually as full-time employees.

Employees of New York City employers may use their sick time for more than their own illnesses or medical appointments. Sick time may also be used to care for an ill family member, which includes a child, spouse, domestic partner, parent, sibling, grandchild or grandparent and a child of a spouse or domestic partner. Under certain circumstances, employers may require that employees provide advance notice of their

¹ The DCA has secured nearly \$484,000 in restitution for more than 6,000 employees, and collected an additional \$353,000 in fines from employers in New York City.

need for sick leave, as well as medical documentation. Employers are required to provide employees with notice of their rights under the law, and to maintain records relating to sick leave.

If an employer already has a policy that provides at least 40 hours of paid time off annually, such as a vacation or paid time off policy, the employer likely will not have to create a new policy that also offers paid sick leave. The existing policy, however, must allow employees to use paid time off as sick leave in compliance with the Earned Sick Time Law.

Although the sick time begins to accrue right away, it is not available to use until 120 days after an employee's first date of employment. Additionally, an employee is permitted to carry over up to 40 hours of unused sick time into the next calendar year, but employers are only required to allow employees to use a maximum of 40 hours of sick time each year. The purpose of the carry-over is to have accrued time available for use at the beginning of the year, if necessary. Despite the carry-over requirement, employers do not have to pay employees for accrued, unused sick time at the end of the year or when they resign, retire, or their employment is terminated.

In light of the relative recency of the legislation, and the DCA's diligent enforcement efforts, New York City employers should review their sick leave policies with counsel and make sure they are in compliance with the Earned Sick Time Act.