

The New York City Council Overrides Mayor Bloomberg's Veto of the Earned Sick Time Act By A 47 To 4 Margin

On June 26, 2013, the New York City Council (the "Council") voted 47-4 to override Mayor Michael Bloomberg's veto and adopt the [New York City Earned Sick Time Act](#) (the "Act"). The Act will require employers with 20 or more employees to begin providing paid sick leave on April 1, 2014. Employers with 15 to 19 employees would be required to provide paid sick leave starting October 1, 2015. These dates could be delayed depending on economic conditions, as measured against the New York Coincident Economic Index, a Federal Reserve Index that measures the New York City economy.

The Act entitles employees to up to five paid sick days (40 hours) annually, which will accrue at the rate of one hour for every thirty hours worked. Employees can begin to use accrued paid sick time after they have been employed for at least 120 days or 120 days after the Act goes into effect, whichever is later. Both part-time and full-time employees are covered, so long as they are employed more than 80 hours in a calendar year. At the end of the year, the employer must either allow the employee to carry over unused accrued paid sick time to the following year (subject to the 40 hour maximum) or pay the employee for the unused accrued paid sick time. Employers are not required to reimburse employees for unused accrued paid sick time upon the employee's termination, resignation, retirement, or other separation from employment.

Employees are entitled to use sick time for absences due to (1) the employee's mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment, or need for preventative medical care; (2) care of a family member needing such medical diagnosis, care or treatment; or (3) closure of the place of business due to a public health emergency or to care for a child whose school is closed due to a public health emergency.

Employees working for employers with less than fifteen employees will be entitled to up to five days of unpaid, job-protected leave once the Act becomes effective. The Act also imposes sick leave requirements on employers of domestic workers. The Act will not apply to any employee covered by a collective bargaining agreement that expressly waives the Act's provisions or provides for comparable benefits. Any employer with a paid leave policy that provides an amount of paid leave sufficient to meet the accrual requirements of the Act is not required to provide additional paid sick time.

The Act mandates that employers retain records documenting the number of hours worked by employees and sick time accrued and taken by employees for a period of at least two years. Employers are required to provide employees with written notice of their entitlement to paid sick time and display a poster in a conspicuous location highlighting the rights guaranteed under the Act. Additionally, the Act includes non-retaliation provisions, which if violated can lead to monetary penalties and other forms of equitable relief.

The Department of Consumer Affairs (the "Department") is responsible for investigating and enforcing the Act. The Department can impose civil penalties

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ranging from \$500 to \$1,000 per violation. The Department can also order the employer to pay penalties to the affected employee. For unlawful termination, the Department can award back pay and equitable relief (including reinstatement). Employees have no right to bring a private civil action for violations of the Act.

Employers should begin to consider what steps are necessary to comply with the Act in advance of the effective date. Even those employers who already provide paid leave will need to review existing policies to determine whether those policies meet the specific accrual requirements of the Act, as well as its unique coverage requirements (which extend protection to both part-time and full-time employees). Furthermore, employers will need to ensure compliance with the recordkeeping and notice requirements of the Act.

This post was authored by [Matt Lampe](#), [Wendy Butler](#), [Emilie Hendee](#), and [Joshua Grossman](#) of Jones Day. The views and opinions expressed herein are those of the authors and do not necessarily reflect the views of Jones Day or the New York State Bar Association.

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