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New Year Brings Even More Leave Requirements for New York City Employers

Following the implementation of the New York State Paid Family Leave Act as of January 1, 2018 (as reported in our advisory, "What Employers Need to Know About New York's New Paid Family Leave Law"), employers must be aware of further changes that will become effective in just a few months. Indeed, amendments to existing laws will expand the permissible use of sick time, provide opportunities for work schedule adjustments due to personal events and place increased burdens on employers.

NYC Sick Time Law Will Now Include "Safe Time"

Since 2014, eligible employees working in New York City have enjoyed the benefits of mandatory paid sick days under the New York City Earned Sick Time Act. The New York City Human Rights Law had also previously expressly required an employer to reasonably accommodate employees who are victims of domestic violence, including granting time off. Effective May 5, 2018, the newly renamed Earned Sick and Safe Time Act (ESSTA) expressly permits employees to use statutory paid sick time for "safe time" purposes. Safe time includes absences resulting from an employee or an employee's eligible family member being the victim of a family offense, sexual offense, stalking or human trafficking. For example, an employee may use an eligible sick day to obtain services from a domestic violence shelter, meet with an attorney to obtain advice on a family offense matter, and to take "other actions" necessary to restore the physical, psychological, or economic health or safety of the employee or family member.

ESSTA also expands the definition of a covered "family member" for whom sick or safe time may be taken, to include any individual related to the employee by blood and any individual whose close association with the employee is the equivalent of a family relationship. Previously, a family member under the New York City Earned Sick Time Act included only a spouse, domestic partner, parent, child, sibling, grandparent, grandchild, or the child or parent of the employee's spouse or domestic partner. This expanded definition applies not only to leave taken for a family member for safe time purposes but also for the other reasons under ESSTA (e.g., to care for a family member's mental or physical illness, injury or health condition).

ESSTA extends the prior notice and documentation requirements to safe time absences. For example, an employee requesting a safe time absence may be required to provide reasonable notice of any foreseeable absence, and those taking a safe time absence for three or more consecutive days may be required to provide written confirmation that the leave was taken for a covered purpose. As with sick time, employees may be asked to provide documentation of the purpose of the absence. Reasonable documentation may include those from the employee (such as a notarized letter explaining the need to take safe leave), an agent or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional services provider. An employer must also maintain the confidentiality of and not disclose such information without the employee's written permission. As with earned sick time, an employer cannot retaliate against an employee for use of safe time.

New York City joins neighboring jurisdictions that provide additional protection to victims of domestic violence, including ***Connecticut, Massachusetts and New Jersey***. New York City employees also benefit from the New York State law that prohibits discrimination against domestic violence victims in the workplace and requires an employer to permit an employee to use paid time off or sick leave to attend court appearances or seek medical care relating to domestic violence.

Temporary Work Schedule Changes for "Personal Events"

Effective July 18, 2018, New York City employers must also provide employees with up to two temporary schedule changes per calendar year due to a "personal event." A "personal event" includes a caregiving emergency, a legal proceeding or hearing for subsistence benefits, or any permissible use of sick or safe time under ESSTA. The new law, which was enacted after the ESSTA amendment described above, amends the City's Fair Workweek Law.

Temporary schedule changes may include paid time off, working remotely, swapping or shifting work hours, and taking unpaid leave. Employees must be granted up to one business day per request; however, if an employer permits the employee to use two business days for one request, a second request need not be granted. Permission to take the requested temporary schedule change as unpaid leave satisfies the employer's obligation under the law.

This amendment also imposes certain notice and response obligations for both the employer and employee. For example, employers must respond *immediately* after receiving an employee's initial request for a temporary schedule change due to a personal event. If an employee has submitted a request in writing, the employer must provide a written response within no later than 14 days, indicating whether the employer will agree to the request, explaining any denial, and notifying the employee of the number of requests and business days that remain for the year.

The law covers all New York City employees, with certain exceptions, including those who are covered by a valid collective bargaining agreement that waives the provisions of the law, certain employees working in the entertainment industry, and employees who have worked for less than 120 days or fewer than 80 hours in New York City in a calendar year.

Next Steps for New York City Employers

Employers who employ employees in New York City should consider the following:

- Review and update existing paid-time-off policies to ensure compliance with the expanding "family member" definition and ESSTA coverage.
- Ensure policies and procedures will permit employees to make temporary work schedule changes for personal events up to two times each year.
- Train management and Human Resources professionals regarding the scope and implementation of these new laws so that they understand the response requirement.
- Provide new hires with a revised notice of their right to safe leave ***beginning May 5, 2018***.
- Provide notice ***by June 4, 2018*** to current employees regarding their right to safe time.
- Stay tuned for updates from the New York City Director of the Office of Labor Standards, which may promulgate additional rules regarding the implementation of the temporary work schedule changes law.

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