

New York City Enacts Paid COVID-19 Child Vaccination Leave

By Richard I. Greenberg and Daniel J. Jacobs

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The New York City *Earned Safe and Sick Time Act* has been expanded to require private employers provide parents with four hours of paid COVID-19 child vaccination time for each vaccine injection for each child, whether to use for the vaccination time itself or side effects. The new law applies retroactively to November 2, 2021.

The New York City Council passed the expansion on November 23, 2021, and the law became effective as Mayor Bill de Blasio did not act upon it within 30 days.

Under the new law, parents generally include biological, foster, step, adoptive, a legal guardian, or a person who stands in loco parentis. Covered children include those under 18 and those older than 18 who are incapable of self-care because of a mental or physical disability.

This new time off is in addition to safe and sick time otherwise required under the New York City *Earned Safe and Sick Time Act*.

Notice and Documentation

Employers may require reasonable notice before employees use the COVID-19 child vaccination leave if the leave is foreseeable, but they cannot require more than seven days' notice prior to use of the time.

Employers may also ask for documentation of vaccination.

The law prohibits adverse employment actions discriminating against or retaliating against an employee who takes such leave. Employers are prohibited from requiring employees to make up the time taken or search for or find a replacement to cover their leave hours.

Payment

Pay for the leave time taken typically would be at the employee's regular rate of pay. It must be paid no later than the next regular payday after the time was used.

No Waiver

Unlike current state and city paid sick and safe leave entitlements, the new leave cannot be waived under the terms of a collective bargaining agreement.

Penalties for Non-Compliance

There is a 60-day phase-in period. The Department of Consumer and Worker Protection will give written notice and a cure period before enforcing the law.

Penalties and relief include:

1. When an employee is not compensated for the leave, the greater of three times the wages that have not been paid or \$250; and
2. Where the employee was denied the leave, a \$500 compensation.

The new law's requirements will be in effect until December 31, 2022.

For additional guidance, please contact a Jackson Lewis attorney.

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