

## With Overwhelming Vote, New York City Council Passes Paid Sick Day Law

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New York City is poised to require employers to provide their workers with sick days. The City Council, by a vote of 45-3, has passed legislation requiring New York City private-sector employers, outside of the manufacturing industry, to provide paid (or unpaid, for certain employers) sick time to employees. The measure approved by the Council on May 8, 2013, reflects a compromise between advocates of such legislation, opponents in the business community and City Council Speaker Christine Quinn, whose delay in bringing the bill for a vote was used (and continues to be used) against her by other mayoral candidates.

While Mayor Michael Bloomberg promises to veto the bill, the City Council appears to have enough votes to override his veto. Council Speaker Quinn has indicated the enactment will guarantee paid sick days to nearly one million workers. At a rally, she stated, "This is not just a great day for workers. It is a great example of how we can bring people together through the legislative process."

Highlights include:

- Employers with at least 15 employees and employers with at least 1 domestic worker must provide employees with paid sick time, as indicated below, each calendar year (the calendar year can be any consecutive 12 month period determined by the employer).
- Assuming the City's economy, as measured by a financial index maintained by the Federal Reserve Bank of New York, is at or above its January 2012 level, the legislation would be effective: (i) **April 1, 2014**, for employers with at least 20 employees; and (ii) **October 1, 2015**, for employers with 15-19 employees or 1 domestic worker (although such employers must provide unpaid time effective April 1, 2014). However, implementation would be delayed if the City's economy erodes.
- Employees, other than domestic workers, accrue 1 hour of sick time for every 30 hours worked, up to a maximum accrual of 40 hours per calendar year.
- Employees, other than domestic workers, begin accruing time at the start of employment or on the effective date of the legislation, whichever is later.
- Employees, other than domestic workers, may begin using accrued time after the 120th calendar day of employment or on the 120th calendar day after the effective date of the legislation, whichever is later.
- Employees can decide how much accrued time to use, but an employer may set a "reasonable" minimum increment of use of up to 4 hours.
- Employees may use accrued time for absences due to:
  - the employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;
  - care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or
  - closure of the employee's place of business by order of a public official due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.
- Employers may require reasonable notice of an employee's need to use accrued time, such as up to 7 days if the need is foreseeable.
- Employers may require documentation to support the authorized reason for use of accrued time if the absence is for more than 3 consecutive work days.

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### Practices

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- Employers must allow employees, other than domestic workers, to carry over accrued unused time from one calendar year to the next, but the employer can cap usage at 40 hours in a calendar year.
- Employers must retain records demonstrating compliance with the measure for 2 years and provide access to such records during a governmental investigation.
- Employers are not required to pay out accrued unused time at separation.
- With the employer's consent, an employee who is absent for a covered reason may work additional hours in a period of time surrounding the absence, and, if the additional hours are fewer than the number of hours originally scheduled, the paid sick time can be used to make up the difference.
- The provisions of the law do not apply to employees covered by a valid collective bargaining agreement ("CBA") if such CBA waives the provisions of the law and the CBA provides for a comparable benefit; however, in the grocery and construction industries, the provisions do not apply as long as they are expressly waived in the CBA.
- *Even businesses not covered by the paid sick time requirement* must provide the same amount of sick time to their employees, although such time may be unpaid.
- Employers covered by the legislation who already provide an amount of paid leave, including paid time off such as vacation or personal days, sufficient to meet the requirements of the legislation and who allow use of such paid leave for the same reasons and conditions as provided for in the legislation are not required to provide additional sick time pursuant to the legislation.
- Retaliation against employees who use paid or unpaid time provided by the law is prohibited.
- Employers must provide employees at time of hire with a written notice of the employee's rights under the law. This notice must be provided in both English and the employee's primary language, provided that the City's Department of Consumer Affairs has issued a model notice in such language. The Department is tasked with issuing model notices in various languages allowing employers to fill in applicable dates for such employer's calendar year.
- Aggrieved employees may file an administrative complaint, which shall be investigated by the Department. Penalties include lost wages, reinstatement and civil penalties.

While New York City employers have time to prepare for this enactment, human resources managers and company administrators should review current policies and practices to ensure all necessary changes are timely implemented. Please contact the Jackson Lewis attorney with whom you regularly work if you have any questions.

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