

Alert | Labor & Employment



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New NYC Sick Leave Law Expands Usage for Persons ‘Equivalent of Family’ and Safe Leave

The New York City Department of Consumer Affairs has issued a revised Notice of Employee Rights under the Earned Safe and Sick Time Act (ESSTA), formerly the Earned Sick Time Act (ESTA), codified at § 20-911 *et seq.* Effective May 5, 2018, ESSTA now permits employees to use sick and safe time to address safety issues and access critical services related to specific criminal offenses.

The ESSTA expands the definition of “family member” with respect to both sick and safe time to cover individuals whose close association with the employee is the equivalent of a family relationship. The EESTA also allows employees to seek assistance or take other safety measures if they or a family member may be the victim or any act or threat of domestic violence or unwanted sexual contact, stalking, or human trafficking. Employees also have a right to use sick leave for the care and treatment of themselves or a family member. The ESSTA does not require New York City employers to provide any additional time off to employees above that which was required under ESTA; rather ESSTA simply expands the reasons for which sick and safe time may be used.

Under the ESSTA, employers are permitted to ask employees to **verify** that an instance of safe or sick leave of any length was used for an authorized purpose under the law. Employers may require an employee to provide documentation only after an employee uses more than three (3) consecutive workdays as safe or sick leave and no less than seven (7) days after the employee returns to work. This documentation can confirm the need for the amount of safe or sick leave used and that safe or sick leave was used for an authorized purpose under the law.

For sick leave, employers may require documentation from a licensed medical provider. For safe leave, employers may require reasonable documentation from social service provider, attorney, court, law enforcement, clergy member, or notarized letter by employee indicating the need for safe leave. Employers may not require that the documentation specify the reason for safe or sick leave.

If an employer provides employees time off for other purposes, such as vacation or personal leave, the employer does not have to provide additional time designated for safe and sick leave if employees can use that time off for safe and sick leave and the employer's policies meet the other requirements of the ESSTA. Employers in this situation still have to provide employees with the Notice of Employee Rights and may want to provide additional documentation that explains how employees can use their time off for safe and sick leave. If an employer has a payout policy, it must be included in the written safe and sick leave policy.

Employers should update their handbooks to indicate that the time may be taken for “safe time” reasons and include broader definitions of family members. Employers may require that an employee provide up to seven (7) days of advance notice, in writing, of their need to use safe or sick leave for foreseeable reasons. If the need for sick or safe leave is unforeseeable, the employer may require an employee to give notice as soon as practicable. The procedures for employees to give notice must be included in the employer's written safe and sick leave policy. Employers should also issue the **revised notice** to all new employees moving forward and all current employees by June 4, 2018. The notice must provide the start and end dates of the employer's calendar year. Employees have a right to the notice in English, and if available on the DCA website, their primary language.

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