

**Update: New York City Council Expands
Scope of Paid Sick Time Law**

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On February 26, 2014, the New York City Council (“City Council”) voted to expand the City’s paid sick leave law, [the Earned Sick Time Act \(“ESTA”\)](#). In a 46-to-5 vote, the City Council passed an amendment to the ESTA requiring New York City employers with *five* or more employees to provide up to 40 hours of paid sick time each calendar year. The legislation now awaits the signature of Mayor Bill de Blasio, who is expected to sign the bill without delay. Paid sick time was a cornerstone issue for Mayor de Blasio during last year’s mayoral campaign. The ESTA’s effective date remains April 1, 2014.

As we previously reported (see the *Act Now Advisory* titled [“It’s Official . . . New York City’s Earned Sick Time Act Will Become Effective April 1, 2014”](#)), the ESTA, as it was originally enacted, required employers with 20 or more employees to provide employees with paid sick time as of April 1, 2014. Eighteen months later, on October 1, 2015, the coverage of the law would have expanded to require City employers with 15 or more employees to provide paid sick time under the ESTA. This gradual provision of coverage has been expressly repealed by the amendment.

In response to implementation concerns by small businesses, which were initially not required to provide paid sick time, a six-month grace period was added for employers with between five and 19 employees. This means that if a violation of the ESTA occurs prior to October 1, 2014, employers with five to 19 employees will not be subject to civil penalties.¹

¹ A first-time violation during the grace period will not serve as a predicate for purposes of imposing penalties for subsequent violations occurring on or after October 1, 2014. A second or subsequent violation occurring during the grace period (between April 1 and September 30, 2014) will serve as a predicate for purposes of imposing penalties for subsequent violations that occur after the six-month grace period.

Amendments to the ESTA

In addition to expansion of the ESTA to cover employers with five or more employees, the law was also amended to:

- broaden the definition of “family member” for whose care an employee may use sick time under the ESTA to include grandparents, grandchildren and siblings (siblings include an employee’s brother or sister, half-siblings, step-siblings, and siblings related through adoption);
- extend the record retention requirement from two to three years (the ESTA requires employers to retain records documenting their compliance with the law);
- grant the mayor authority to designate an agency other than the Department of Consumer Affairs to enforce the ESTA;
- increase the statute of limitations for filing a complaint with the Department of Consumer Affairs, or other applicable agency, to two years (previously the time limit was 270 days) following the date that the alleged violation became known or should have become known;
- require employers to respond to a complaint filed with the Department of Consumer Affairs, or other applicable agency, within 30 days of receiving written notification of the complaint; and
- eliminate the manufacturing industry’s exemption from coverage.

The remaining provisions of the ESTA remain in effect, including the definition of covered employees (full or part-time employees working more than 80 hours in a year, including domestic workers), as well as the ESTA’s accrual, use, and carry-over provisions, among others. For more information, please see our May 16, 2013 *Act Now* Advisory ([New York City Paid Sick Time Law Will Likely Become Effective](#)).

The City Council did not amend the unpaid sick leave provision. The ESTA still requires employers to provide unpaid sick time to those employees who are not eligible for paid sick time. That is, employers with fewer than five employees must provide up to 40 hours of unpaid time. Further, for employees covered by a collective bargaining agreement, the amended ESTA will not become effective until the termination date of the agreement currently in effect.

Employers should be aware that, pursuant to an earlier amendment to the ESTA, employers must provide employees with a notice of their rights under the ESTA on the later of (i) the commencement of employment or (ii) May 1, 2014. Such notice, which will be made available on the Department of Consumer Affairs’ website, will advise employees of their right to sick time and provide information pertaining to accrual and

the right to be free from retaliation. The notice must be given to employees in English and in the primary language spoken by the employees, provided that the translation of such notice is made available by the Department of Consumer Affairs.

What Employers Should Do Now

Prior to April 1, 2014:

- determine if the paid provisions of the amended ESTA apply to your New York City workforce;
- review your existing sick, PTO, and other time-off policies to ensure that they comply with the requirements of the ESTA, including the new provision covering additional family members (grandparents, grandchildren, and siblings); and
- await instructions from the Department of Consumer Affairs (or another designated City agency) relating to the ESTA's notice requirements for both new and current employees.

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