

## **It's Official . . . New York City's Earned Sick Time Act Will Become Effective April 1, 2014**

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**By William J. Milani, Jeffrey M. Landes, Susan Gross Sholinsky, Anna A. Cohen,  
Jennifer A. Goldman, and Nancy L. Gunzenhauser\***

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As we previously reported (see the *Act Now Advisory* titled "[New York City Paid Sick Time Law Will Likely Become Effective](#)"), on May 8, 2013, the New York City Council passed the Earned Sick Time Act ("ESTA"), requiring private employers to guarantee sick time to employees who work in New York City. When the law was passed, City legislators established a timetable for the ESTA's effective date, depending on the economic conditions of the City, pursuant to a New York City economic index. If the City's economy in December 2013 fell below the January 2012 level, the effective date of the ESTA would have been postponed.

On December 13, 2013, however, the New York City [Independent Budget Office](#) confirmed that the City's economic indicators met the requisite threshold so that the ESTA will, indeed, go into effect on the earliest possible date—April 1, 2014. Further, in his inaugural address, New York City's new mayor, Bill de Blasio, vowed to expand the ESTA "because no one should be forced to lose a day's pay, or even a week's pay, simply because illness strikes."

Accordingly, beginning April 1, 2014, New York City employers must provide sick time pursuant to the ESTA.

Under the ESTA:

- Full-time and part-time employees who work at least 80 hours in a calendar year<sup>1</sup> in New York City will accrue one hour of sick time for every 30 hours worked, up to a maximum of 40 hours in that year;
- NYC employers with 20 or more employees must provide this time as paid sick time; and

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<sup>1</sup> A "calendar year" is defined as a regular and consecutive 12-month period, as determined by the employer (i.e., anniversary year).

- NYC employers with fewer than 20 employees must provide this time as unpaid sick time.

Sick time pursuant to the ESTA will begin to accrue upon the later of (a) the commencement of employment, or (b) April 1, 2014. Further, an employee may begin using the earned sick time under the ESTA on the later of (a) the 120th day following commencement of his or her employment, or (b) July 30, 2014.

As of October 1, 2015, the *paid* sick time provisions of the ESTA will apply to employers with 15 or more employees. Employers with fewer than 15 employees will continue to be required to provide *unpaid* sick time. Further, effective October 1, 2015, employers that employ domestic workers who work at least 80 hours in a calendar year must provide two days of paid sick time, in addition to statutory paid days of rest, regardless of the number of domestic workers employed.

As we previously reported, employees can use sick time for their own physical or mental illness, injury, or health condition, or for medical diagnosis treatment or preventive care, and when caring for a spouse, domestic partner, children, or parents. Earned sick time may also be used during declared public health emergencies. Additionally, if an employer's existing policy already provides for paid sick time or other paid time off ("PTO") that can be used for the reasons set forth under the ESTA, the paid leave offered under that policy will be sufficient to comply with the ESTA, but only so long as the policy satisfies all of the ESTA's requirements, including carry-over rules and rules pertaining to part-time employees. Importantly, "use it or lose it" sick day or PTO policies technically will not comply with the ESTA.

Importantly, employees covered by a valid collective bargaining agreement ("CBA") in effect on April 1, 2014, will not become subject to the ESTA until the expiration date of such CBA. Further, when entering into a new CBA or renewing an expiring CBA, the CBA should comply with the ESTA, or alternatively, the requirements of ESTA will be deemed satisfied if (i) the provisions of the ESTA are expressly waived in such CBA, *and* (ii) such CBA provides for a comparable benefit for the covered employees. Such a "comparable benefit" can be in the form of paid days off, such as vacation time, personal days, sick days, holidays and Sunday time pay at premium rates, or some combination thereof. Finally, the ESTA does not apply to any employee in the construction or grocery industry covered by a valid CBA if such provisions are expressly waived in such CBA.

### **What Employers Should Do Now**

- Determine how many individuals are employed in New York City for more than 80 hours in a calendar year in order to determine whether the paid or unpaid provisions of the ESTA apply to your NYC workforce.
- Consider whether existing working arrangements with part-time, seasonal, or other short-term employees should be revised so as to comply with (or avoid the need to comply with) the ESTA.

- Review existing sick, PTO, and other policies addressing time off from work to see if they encompass all requirements set forth in the ESTA, including those pertaining to:
  - the carry-over of sick days;
  - the availability of sick time to part-time employees; and
  - providing time off for the reasons set forth in the ESTA (including to care for the illnesses of family members and time off in case of a public emergency).
  
- When entering into a new CBA or renegotiating a CBA that will become effective after April 1, 2014, ensure that the CBA complies with the requirements of the ESTA or that it both waives employees' rights under the ESTA and provides for comparable benefits.
  
- Keep an eye out for expanded protections under the ESTA, as promised by Mayor de Blasio.

For more information about this Advisory, please contact:

**Jeffrey M. Landes**  
 New York  
 212-351-4601  
 jlandes@ebglaw.com

**William J. Milani**  
 New York  
 212-351-4659  
 wjmilani@ebglaw.com

**Susan Gross Sholinsky**  
 New York  
 212-351-4789  
 sgross@ebglaw.com

**Anna A. Cohen**  
 New York  
 212-351-4922  
 acohen@ebglaw.com

**Jennifer A. Goldman**  
 New York  
 212-351-4554  
 jgoldman@ebglaw.com

**\*Nancy L. Gunzenhauser**, a Law Clerk – Admission Pending (not admitted to the practice of law) in the firm's New York office, contributed significantly to the preparation of this Advisory.

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