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City Council Expands New York City Earned Sick Time Act

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Yesterday, the New York City Council passed an amendment to the New York City Earned Sick Time Act (the "Act") expanding its coverage in several significant ways. The law, as amended, will take effect on April 1, 2014. As previously reported in our earlier Client Alerts [available here: May 9, 2013, June 28, 2013, December 17, 2013, and January 28, 2014], the Act requires virtually all New York City employers to provide mandatory paid or unpaid sick leave to employees working in New York City.

Amendments to the original law:

- Extend the right to up to five (5) days of paid sick leave to employees working in New York City for **employers with five or more employees**. (The existing legislation covered those with fifteen or more employees.) Employers with fewer than five employees still need to provide up to five (5) days of job-protected unpaid sick leave. Employers of domestic employees are covered regardless of the number of domestic employees employed.
- **Eliminate the phasing-in of coverage for the paid leave requirement**. All covered employers with five or more employees, and employers of domestic employees, will need to provide paid leave as of April 1, 2014. (The existing legislation would have delayed coverage for workers at businesses with 15-20 employees and for domestic employees until October 2015.) Any unpaid leave requirements also must commence on April 1, 2014. The phase-in provision for employees covered by a valid collective bargaining agreement in effect on April 1, 2014 remains in the law.

Provide a grace period for civil penalties for small employers and those in manufacturing sector. There is a six-month grace period during which civil penalties will not be issued to employers with 5 - 19 employees, or for employers in the manufacturing sector. First-time violations during the grace period (April 1, 2014 – October 1, 2014) will not serve as a predicate for imposing penalties with respect to subsequent violations occurring after the grace period, but two or more violations during the grace period *may* serve as predicates for imposing penalties after the grace period ends on October 1, 2014.

- **Remove exemptions for the manufacturing sector**. The existing legislation would have exempted certain employers in the manufacturing sector (*e.g.* plants, factories and mills, as well some bakeries, candy stores, custom tailors and similar establishments that manufacture products on site.)
- **Add grandparents, grandchildren, and siblings to the definition of family member**. Under the Act, workers can use their sick time to care for sick family members. The existing legislation would have only permitted leave to care for parents, spouses, and children. The proposed amendment's inclusion of "siblings" also includes half siblings, step siblings, and adopted siblings.
- **Grant the Mayor the authority to designate a different agency to enforce to Act**. Under the existing legislation, the agency responsible for enforcement of the Act is the Department of Consumer Affairs. The amendment also expands the authority of the enforcing agency (e.g., providing for authority to, among other things, conduct investigations, hold hearings, administer oaths, serve subpoenas, render decisions, impose penalties, and distribute monies collected as a result of actions brought for violations, and amend and modify rules and regulations necessary to enforce the law) and provides details on the enforcement proceedings (e.g., a time table for responding to complaints).
- **Increase record retention requirements for employers from two to three years**.
- **Increase the time for filing a complaint from 270 days to two years**.

Requires notice to be given to current employees. Notice of rights under the law now must be issued to all current employees by May 1, 2014. The original version of the law only required notice to be issued "upon commencement of employment". Notice of rights posters must be in English and the primary language spoken by the employee, provided that the department has made available a translation of the notice in that language. While official notice posters have not yet been promulgated, we expect them to be available in advance of the law's effective date, April 1, 2014.

Require employment and placement agencies for domestic employees to provide a notice of rights to both the employee and the employer family prior to placement. The Act modifies City Administrative Code § 20-771, which had previously required that such agencies issue a notice of employee rights regarding such topics as wages, hours, and withholdings, to include notice of earned sick time information. Note that § 20-771(b) requires the employment agency to obtain a signed acknowledgement of understanding of the statement of rights and obligations by the employer of domestic employees, and to maintain the record of such acknowledgement for three years.

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