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Westchester County, New York Enacts Paid Sick Leave Law

Law and the Workplace Blog on **November 2, 2018**

Westchester County, NY has become the latest jurisdiction to enact a law providing eligible employees with paid leave for their own medical needs, those of a family member, or other covered reasons. The Ordinance will take effect on March 30, 2019.

Covered Employees and Accrual of Sick Leave

Similar to the New York City Earned Safe and Sick Time Act ("ESSTA"), all full-time and part-time employees who work more than 80 hours per year in Westchester County are eligible to earn sick leave at a rate of 1 hour for every 30 hours worked, up to 40 hours per calendar year (or any other 12 month period used by the employer to calculate sick time). For employers with five or more employees working in Westchester County, this leave must be paid at the employee's normal rate of pay; employers with fewer than five employees need only provide unpaid leave. Special rules apply for domestic workers. While new employees begin accruing sick leave at the start of employment, they may be restricted from using any accrued leave for up to 90 days following hire.

Where an accrual method is used to calculate earned sick leave, employees must be permitted to carry over available but unused sick leave for immediate use in the following year, though the maximum amount of sick leave to be used by employees in a given year may be capped at 40 hours. Alternatively, employers can satisfy the law's requirements and avoid having to track employee accruals by providing an employee with sick time equaling 40 hours or more at the start of each calendar year (or any other 12 month period used by the employer to calculate sick time), provided the frontloaded time can be used for the same purposes and under the same conditions as accrued sick time under the Ordinance.

An employer that currently offers its employees paid time off (which may include personal, sick and/or vacation days) that is equal to or greater than that required by the Ordinance, and that can be used for the same purposes and under the same conditions as provided by the Ordinance, may use such time to satisfy its obligations under the Ordinance.

Similar to ESSTA, the Ordinance shall not apply to employees covered by a valid collective bargaining agreement so long as the agreement: (i) expressly waives the provisions of the Ordinance; and (ii) provides for a comparable benefit in the form of leave, compensation, other employee benefits, or some combination thereof.

Use of Sick Leave

Employees will be able to use sick leave under the Ordinance for any one or a combination of the following reasons:

- For an employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care or treatment of such illness, injury or health condition; or an employee's need for preventative care;
- Care of a family member with a mental or physical illness, injury or health condition; for the family member's need for medical diagnosis, care or treatment of such illness, injury or health condition; or for the family member's need for preventative care;
- Care of an employee or family member when it has been determined by public health authorities that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease; and/or
- Closure of the employee's place of business or a day care or elementary or secondary school attended by an employee's child where such closure is due to a public health emergency.

For purposes of the Ordinance, "family members" include an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse, domestic partner or household member (as defined in the Ordinance).

Employers may require that employees use sick leave in minimum daily four hour increments, following which any additional sick leave needed in the same day must be made available in the smallest increment that the employer's payroll system uses to account for absences or use of other time.

Employees may be required to comply with the employer's usual notice and procedural requirements for absences or for requesting leave. Employers may require documentation of the need for sick leave for absences of more than three consecutive days.

Notice and Recordkeeping Requirements

Employers shall be required to provide both current employees and new hires with a copy of the Ordinance along with "written notice of how the law applies to that employee." Such notice must be provided within 90 days of the effective date of the law (*i.e.,* June 28, 2019) or at the commencement of employment, whichever is later. Employers also shall be required to display a copy of the Ordinance and a notice of rights poster in a conspicuous location accessible to employees. It is unclear whether the County plans to issue any form notices to satisfy these requirements.

Employers will be required to maintain records reflecting both the hours worked and sick hours accrued and used by employees for a period of three years.

Remedies Available

Unlike ESSTA, the Ordinance provides employees with a private right of action for violations of the law. Employees may recover the greater of $250 or three times the wages that should have been paid for each instance of undercompensated sick time taken, and$500 for each instance where employees have been unlawfully denied requested sick time. Other available remedies include reinstatement and back pay, attorneys' fees, the costs of an administrative hearing, and other monetary and equitable relief.

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We will continue to report on new developments with regard to this and other paid leave laws around the country as they arise.

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