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New York City Council Establishes Private Right of Action for NYC Earned Safe and Sick Time Act Violations

Law and the Workplace on **January 26, 2024**

The New York City Council has passed a bill that creates a private right of action for individuals claiming violations of the NYC Earned Safe and Sick Time Act ("ESSTA"). The Council presented the bill to Mayor Eric Adams on December 20, 2023, after which he had 30 days to either sign the bill into law, veto it, or take no action. Since Mayor Adams took no action within 30 days of receiving it, the bill became law and will take effect on March 20, 2024.

As a reminder, the ESSTA requires employers to provide New York City employees with time off to care for or treat illnesses, injuries or health conditions or obtain preventative care for themselves and their family members, and for certain covered reasons where an employee or their family member is a victim of domestic violence, a family or sexual offense, stalking or human trafficking (referred to as "safe leave"). The ESSTA requires employers to provide either 40 or 56 hours of paid or unpaid leave per year, depending upon the employer's size.

Presently, the sole enforcement mechanism for alleged violations of the ESSA is to file a complaint with the NYC Department of Consumer and Worker Protection ("DCWP"). The DCWP is in turn required to investigate the claim and if it is determined that a violation has occurred, the claim goes before an administrative law judge for further proceedings.

The new amendment will still allow for the filing of complaints with the DCWP but will also enable "any person" to bring a civil action for alleged violations of ESSTA in any court of competent jurisdiction. Individuals may file a civil action in court in addition to a DCWP complaint for the same alleged violation, but individuals will not be required to first file a complaint with or alert the DCWP of an alleged violation before filing suit. Individuals will have two years from the date they knew or should have known about the alleged violation to bring an action.

Where an individual has both filed a complaint with the DCWP and commenced a civil action against their employer for the same alleged violation, DCWP will stay their investigation of the alleged violation until it receives notice that the civil action is withdrawn or dismissed without prejudice. If DCWP receives notice of a final judgment or settlement, the agency will dismiss the complaint unless it determines that the violation was not resolved by such judgment or settlement. The individual must notify DCWP within 30 days of the date that the time for any appeal has lapsed that such complaint is withdrawn, dismissed without prejudice, or resolved by final judgment or settlement.

In addition to compensatory damages already provided for under the ESSTA, the new amendment will allow individuals to seek injunctive and declaratory relief, attorney's fees and costs, and other relief that the court deems appropriate. The amendment also expands ESSTA's civil penalty provisions for entities found to be in violation of the law's provisions regarding the accrual and use of sick or safe time or retaliation to be imposed "on a per employee and *per instance* basis" (newly added language emphasized).

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