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New York City Earned Sick Time Act Takes Effect April 1, 2014

December 17, 2013

The New York City Earned Sick Time Act (the "Act") will take effect on April 1, 2014. As previously reported in our earlier client alerts, the Act has a complex provision that ties its effective date to a Federal Reserve index measure of the New York City economy on December 16, 2013 being above the index's January 2012 level. On Friday December 13, 2013, the City of New York Independent Budget Office reported to the Mayor and City Council Speaker that the most recent measure of the Index of Coincident Indicators for New York City, published by the Federal Reserve Bank of New York, exceeded the January 2012 value of the index.

Thus, all New York City employers who are not governed by a specific exception to the law, and whose employees are not governed by a collective bargaining agreement (CBA), will need to ensure that their leave policies comply with the minimum requirements of the Act as of April 1, 2014. For covered employers whose employees are governed by a valid CBA that is in effect on April 1, 2014, the effective date of the Act with respect to their unionized employees is deferred to the date the CBA expires.

Initially, the paid leave provisions of the Act apply to all covered employers that employ twenty (20) or more employees in New York City. The employee threshold for complying with the paid leave provisions of the Act drops to fifteen (15) New York City employees as of October 1, 2015.

Nevertheless, all covered employers with fewer than 20 New York City employees must begin to apply the protected unpaid leave provisions of the Act to their non-unionized New York City employees beginning on April 1, 2014.

Only employees employed for hire within the City of New York who work at least 80 hours in a calendar year are entitled to leave under the Act.

Action Items

- All New York City employers will need to determine whether they are covered bythe Act, which contains exclusions for businesses under certain classificationsunder the North American Industry Classification System along with governmental entities.

- All covered New York City employers will need to evaluate whether they have a sufficient number of employees to be obligated under the paid leave provisions of the Act, or whether only the protected unpaid leave provisions of the Act apply.

- All covered New York City employers will need to review their existing leave policies to determine whether and what modifications may be necessary to ensure compliance with the requirements of the Act. Although the Act provides that employer leave policies that exceed the requirements of the Act are not required to provide additional leave benefits to comply, employers must ensure that existing policies meet those requirements in all respects, including with respect to accrual rates, carryover requirements, and qualifying reasons for leave such as family leave.

- Covered New York City employers also will need to review their call-in and verification procedures for compliance with the requirements of the Act. The Act contains specific restrictions on the ability to require medical documentation from employees who use leave covered under the Act that may not be consistent with many common employer practices.

- Covered employers also will need to ensure compliance with the notice and record keeping requirements of the Act.

- Unionized employers also will need to address whether a successor CBA will waive the provisions of the Act while providing a comparable paid leave benefit.

- Human Resources, legal, and managerial staff may need to be trained to ensure compliance in administering the Act to avoid statutory retaliation claims and other penalties provided under the Act.

Employers are advised to consult with counsel to ensure their leave policies comply, or when integrating the Act's requirements to existing leave policies, as the provisions and requirements of the Act are very specific and detailed and present many traps for the unwary.

For more detailed information about the Act and its key provisions, read our earlier client alerts May 9, 2013 and June 28, 2013 on this topic.