

Amendments to New York City's Earned Safe and Sick Leave Law

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by Nicholas J. Pappas and Krista Bolles

Sweeping amendments to New York City's Earned Safe and Sick Time Act ("ESSTA"), N.Y. C. Admin. Code. 20-911 *et seq.* recently took effect on February 22, 2026. ESSTA requires employers to provide employees in New York City with paid and unpaid time off for a variety of reasons related to health, safety, childcare, legal proceedings for public benefits and housing, and public disasters. Originally enacted in April 2014, the law has been amended several times to expand employee rights to protected time off. Last year, the New York City Council enacted the most significant changes yet to ESSTA. As part of these amendments, the City has also begun referring to ESSTA as the "Paid Time Off Law." ESSTA now requires private sector employers to provide three different forms of job-protected leave: paid safe and sick leave, unpaid sick and safe leave, and paid prenatal leave. The recent amendments to the law provide important protections to employees, but they also impose significant new compliance obligations on employers amid an increasingly complex landscape of leave administration.

Multistate employers face a growing patchwork of state and local sick leave laws across the country. In recent years, numerous states and municipalities have passed laws mandating job-protected sick leave for private sector employees. At least seventeen states, the District of Columbia and numerous municipalities require employers to provide job-protected sick leave to their employees. In this article, we will summarize the new requirements imposed by ESSTA.

Amendments to ESSTA

In 2025, the New York City Counsel amended ESSTA to require employers to provide employees with 20 hours of paid prenatal leave, 32 hours of unpaid safe and sick leave (in addition to up to 56 hours paid safe and sick leave), and to provide for expanded uses of safe and sick leave, including to care for a minor child or attend a legal proceeding for subsistence benefits. New York City Mayor Zohran Mamdani's office recently issued a press release announcing an enforcement blitz by the Department of Consumer and Worker Protection ("DCWP"), the agency responsible for enforcing ESSTA. DCWP sent

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out compliance warnings to more than 56,000 employers, and announced a new data-driven enforcement strategy to compare paid sick leave use in employer records with national data from the U.S. Centers for Disease Control and Prevention for evidence of likely noncompliance.[1]

Scope of ESSTA. The law applies to private sector employees who work in New York City, with the exception of certain employees covered by collective bargaining agreements and certain hourly professionals licensed by the New York State Education Department. Employers located outside of New York City must provide ESSTA leave to any of their employees who work in New York City, including employees who work remotely in New York City or who live outside of the City.

Paid Safe and Sick Leave

Employers with fewer than 100 employees in the U.S. must provide employees with 40 hours of paid sick and safe leave per year. However, if an employer has fewer than five employees and a net income of less than \$1 million in the previous tax year, it may provide this 40-hour allotment of safe and sick leave as unpaid time off. Employers with 100 or more employees in the U.S. must provide employees with 56 hours of paid safe and sick leave per year. Employers may calculate safe and sick leave time based on the calendar year, a benefits year, or some other 12-month period.

Paid safe and sick leave accrues at the rate of one hour for every 30 hours worked. For purposes of accrual, most exempt employees are assumed to work 40 hours per week. Employers have the option to frontload paid safe and sick time by making it available at the beginning of each year, rather than requiring employees to accrue it over time. Frontloading the full amount of paid safe and sick time at the beginning of the year relieves employers of the obligation to track and note accruals on pay statements. However, it does not relieve them of the obligation to track and note an employee's use and balance of safe and sick leave on pay statements, as described in more detail below.

Pursuant to ESSTA, employees may carryover from one year to the next up to 40 hours (for employers with fewer than 100 employees) or 56 hours (for employers with 100 or more employees) of accrued, unused paid safe and sick leave. However, employers may cap the use of paid safe and sick leave at 40 or 56 hours per year (depending on employer size). The ability to carryover paid safe and sick time from one year to the next is beneficial for employees who may need to use such time early in the year, before they have accrued sufficient paid leave in that year. Employers who both frontload the full amount of paid sick and safe time at the beginning of each year and pay employees for any unused time at the end of the year do not need to permit carryover.

Unpaid Safe and Sick Time

All employers, regardless of size and net income, also must provide employees with 32 hours of unpaid safe and sick leave as of February 22, 2026, upon hire and on the first day of each year. The annual 32 hours of unpaid safe and sick time may not be

prorated, including for employees who commence employment mid-way through the year.

Unlike paid safe and sick time, these 32 hours of unpaid leave do not accrue, and are available for immediate use on the first day of each year or upon hire. Employers are not required to allow employees to carryover unused unpaid safe and sick leave from one year to the next. Employers must, however, allow employees to exhaust their paid safe and sick leave before using any unpaid safe and sick time.

Permitted Uses of Safe and Sick Leave

Both paid and unpaid safe and sick leave may be used for a number of reasons, including (i) to care for an employee's own health needs or that of a family member, (ii) during a business, school or daycare closure for a public health emergency, (iii) to seek assistance or take safety measures if an employee or a family member is the victim of domestic violence, unwanted sexual contact, stalking, human trafficking or workplace violence, (iv) to care for a child or for a family or household member with a disability, (v) to attend housing and public benefits appointments and hearings, and (iv) to stay home when the government declares a public disaster (e.g., fires, hurricanes, terrorist attacks).

Paid Prenatal Leave

In addition to safe and sick leave, ESSTA also requires employers, regardless of size and net income, to provide employees with 20 hours of paid prenatal leave. Employers must provide employees with a separate bank of paid prenatal leave that is distinct from, and cannot be combined with, any other leave including safe and sick leave.

Paid prenatal leave does not accrue and is immediately available for use upon hire and on the first day of every 52-week period. For purposes of calculating paid prenatal leave, a 52-week period for a particular employee will begin on the first day that the employee uses paid prenatal leave. Employees may use paid prenatal leave to receive health care during pregnancy or related to pregnancy, including fertility treatment. Only employees who are directly receiving health care for their pregnancy may use paid prenatal leave, and such leave may not be used after childbirth.

Additional Requirements

ESSTA imposes several additional obligations and restrictions on employers.

First, employers must note on an employee's pay statement or other form of written documentation provided each pay period: (i) the amount of paid safe and sick time the employee has accrued during a pay period; (ii) the amount of paid and unpaid safe and sick time the employee used during a pay period; and (iii) the amount of paid and unpaid safe and sick time the employee has available for immediate use.

Additionally, for each pay period in which an employee uses paid prenatal leave, an employer must note on the employee's pay statement or in other written documentation

provided to the employee, both the amount of paid prenatal leave used during the pay period and the amount of paid prenatal leave available for immediate use.

Second, ESSTA only permits employers to require reasonable documentation from an employee that their use of leave was for an authorized purpose when the employee takes leave for more than three consecutive workdays. The law also circumscribes the types of documentation that employers may require, and prohibits employers from requiring employees to disclose the nature of the employee's or family member's medical condition or care, or the underlying reason for using safe time.

Third, employers may require reasonable advance notice of an employee's need for leave. When the need for leave is foreseeable, an employer may require notice up to seven days in advance. However, when the need for leave is not foreseeable, an employer may only require notice as soon as practicable, including upon the employee's return from leave.

Fourth, employers must provide employees with a written notice of rights under ESSTA upon hire and within 30 days of any change to such rights. Employers also must post a notice of rights in the workplace. The DCWP published a model notice of employee rights on its website that employers may use.

Finally, employers must maintain a written policy on ESSTA leave that addresses several issues including accrual, frontloading and carryover of safe and sick time, the amount of safe and sick leave that is immediately available for use, the availability of a separate bank of paid prenatal leave, any advance notice requirements and procedures, requirements regarding written documentation of leave and consequences for failing to provide such documentation, minimum increments for use, any policy regarding misuse of leave, and a statement that the employer will not ask employees for details about the reason for use of ESSTA leave and that the employer will treat any information it receives as confidential. Employers should update their policies as necessary to reflect the recent amendments to ESSTA.

Employers who fail to comply with their obligations under ESSTA may be subject to progressive civil penalties assessed on a per employee and per instance basis as well as private rights of action by employees to recover compensatory damages, injunctive and declaratory relief, and attorneys' fees and costs.

[1] New York City Mayor's Office, *Mayor Mandani Announces Major Expansion of Protected Time Off for 4.3 Million Workers and New Data-Driven Enforcement strategy* (February 20, 2026): <https://www.nyc.gov/mayors-office/news/2026/02/mayor-mamdani-announces-major-expansion-of-protected-time-off-fo>; New York City Department of Consumer and Worker Protection, *Benchmarks for Evaluating Compliance with NYC's Protected Time Off Law*: <https://www.nyc.gov/assets/dca/downloads/pdf/media/Protected-Time-Off-Report.pdf>.

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