Patterson Belknap

Employment Law Alert
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New York City Expands Safe and Sick Leave Law and Narrows Temporary Schedule Change Obligations

On October 25, 2025, the New York City Council enacted into law amendments to the Earned Safe and Sick Time Act ("ESSTA") and the Temporary Schedule Change Act ("TSCA"). The amendments will take effect on February 22, 2026.

As detailed below, the new law will require employers to update their leave-related policies and practices in several ways. First, employers will have to provide a minimum of 32 hours of unpaid safe/sick time to new employees upon hire and to all employees at the start of each calendar year. Second, the amendments broaden the permissible reasons for employees to use safe/sick leave under ESSTA. Third, the amendments codify changes to ESSTA Rules that took effect on July 2, 2025 to provide employees with 20 hours of paid prenatal leave during any 52-week calendar period. Lastly, the amendments narrow employer obligations relating to temporary schedule changes under TSCA.

Additional 32 Hours of Unpaid Safe/Sick Time

As our previous client alert discussed, ESSTA currently requires employers to provide up to 40 or 56 hours of paid safe/sick leave per year, depending on the employer's size.[1]

Under the recent amendments, employers must provide a separate bank of 32 hours of unpaid safe/sick time in addition to the paid or unpaid leave employees are already entitled to under ESSTA. In addition, employers must make the new unpaid safe/sick time immediately available to new employees upon hire and to all employees on the first day of each calendar year. Employers may not impose a waiting period to use the new unpaid safe/sick leave but may set a minimum usage increment of up to four hours per day.

If an employee requests time off for an ESSTA-covered purpose, generally an employer must first provide paid safe/sick time[2] unless such leave is unavailable, or the employee specifically requests to use other leave in lieu of paid safe/sick time. The amendments also impose new notice and recordkeeping obligations on employers. Under the new law, employers must separately track and report an employee's total safe/sick time balance available for use in writing to each employee in each pay period.

The additional 32 hours of unpaid safe/sick leave, to the extent unused at the end of a year, do not have to be carried over into future years. This "no carry over" rule does not apply to the 40 hours (or 56 hours) of paid safe/sick leave which, if unused, must be carried over into future years.

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[1] Employers with 4 or fewer employees and a net income of less than $1 million in the prior tax year are required to provide up to 40 hours of unpaid safe/sick leave.

[2] Specifically, the statute, N.Y.C. Admin. Code § 20-913(k), refers to the 40 hours (or 56 hours) of safe/sick leave (which is generally paid leave but can be unpaid leave in the circumstances described in footnote 1) that must be provided first when an employee requests safe/sick time off.

More Covered Uses of Safe/Sick Time

The amendments expand the permissible reasons for using leave, including:

- Caregiving: employees who qualify as "caregivers"[3] may take safe time to care for a minor child or care recipient.[4]

- Subsistence benefits/housing: employees may use safe time (i) to initiate, attend, or prepare for a legal proceeding or hearing relating to subsistence benefits or housing to which the employee, a family member, or the employee's care recipient is a party or (ii) to take actions necessary to apply for, maintain, or restore subsistence benefits or shelter for the employee, a family member, or the employee's care recipient.

- Workplace violence: employees may use safe time for an absence from work if the employee or their family member has been a victim of workplace violence.

- Public disasters: employees may use sick time when a "public disaster" results in:
    i. the closure of the employee's workplace,
    ii. a directive from public officials to remain indoors or avoid travel, or
    iii. a need to care for a child whose school or childcare provider has closed or restricted in-person operations.

Paid Prenatal Leave Codified into ESSTA

In addition to new safe/sick leave benefits, the new law requires employers to provide a separate bank of 20 hours of paid prenatal leave during any 52-week calendar period to employees. Paid prenatal leave may be taken by employees to obtain healthcare services during or related to their pregnancy, including fertility treatment and end-of-pregnancy care appointments. Employers may set a minimum usage increment of one hour per day for prenatal leave.

This change codifies amendments to ESSTA Rules that took effect on July 2, 2025, to align with New York State's paid prenatal leave law. Failure to provide paid prenatal leave to eligible employees may expose employers to civil penalties under ESSTA. Employers will also have to distribute and post the New York City Department of Consumer and Worker Protection's updated prenatal leave notice in the workplace.

Collective Bargaining Agreement Exception

The amendments provide that ESSTA's requirements do not apply where an employee is covered by a valid collective bargaining agreement that expressly waives ESSTA provisions and provides "superior or comparable benefits." The new law, however, explicitly states that "unpaid time off shall not be considered a comparable benefit for purposes of paid safe/sick time or paid prenatal leave."

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[3] Section 20-912 of the N.Y.C. Admin. Code defines "caregiver" to mean "a person who provides direct and ongoing care for a minor child or a care recipient."

[4] Section 20-912 of the N.Y.C. Admin. Code defines "care recipient" to mean "a person with a disability, including a temporary disability, who (i) is the caregiver's family member or resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the needs of daily living."

Temporary Schedule Change Act Significantly Narrowed

The amendments significantly narrow employer obligations under TSCA. Once the new law goes in effect on February 22, 2026, employers will no longer be obligated to grant two temporary schedule changes to an employee's work schedule when requested by the employee due to a personal event.

The amended TSCA provides that when an employee requests a schedule change because of a personal event, the employer only has to respond to the request as soon as practicable, and that the employee is protected from retaliation for having made the request. Notably, the amendments also eliminate the requirement that employees have at least 120 days of employment to be covered by TSCA.

Takeaways for Employers

Employers located in New York City or that have employees working in New York City should be prepared to follow the amended ESSTA and TSCA when the amendments take effect on February 22, 2026. Employers should promptly review their leave-related policies and practices to ensure compliance with the new amendments.

Employers should ensure that they implement policies and procedures to provide employees with 20 hours of paid prenatal leave and 32 hours of unpaid safe/sick leave, to distribute and post updated prenatal leave notice, and to have the capability to track and report safe/sick time balances for each individual employee in each pay period in writing. Furthermore, some employers may need to revise their TSCA materials to replace guaranteed schedule changes with a request-response process and an anti-retaliation reminder.

Please contact us for further guidance on the requirements and employer obligations under ESSTA and TSCA.

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