

HOME CARE CLIENT ALERT



AMENDED NEW YORK CITY EARNED SICK TIME LAW REQUIRES PROMPT ACTION BY AGENCIES

The New York City Earned Sick Time Act was amended to now allow New York City employees to use earned sick time to address issues relating to the employee's or a family member's domestic violence, sexual offense, stalking, or human trafficking. The amended law took effect May 5, 2018, but the Department of Consumer Affairs only recently published the revised notice relating to Earned Sick Time Act and announced that the new notice must be distributed to employees by June 4, 2018. Home care providers and fiscal intermediaries, which often rely on providing paid time off and sick time to meet some of their wage parity requirements, must take swift action to comply with these requirements, as explained below.

About the Amendments

The amended Earned Sick Time Act will now require employers to provide New York City employees with paid time off for "safe time," which is time off related to the employee or a family member of the employee being involved in certain sexual offense, domestic violence, or human trafficking situations. The law specifically allows employees to use "safe time" for the following reasons: (a) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program; (b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or an employee's family members from future harm; (c) to meet with an attorney or other social service provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding, including matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit; (d) to file a complaint with law enforcement; (e) to meet with a district attorney's office; (f) to enroll children in a new school; or (g) to take other actions necessary to maintain, improve, or restore

the physical, psychological, or economic health or safety of the employee or his/her family member.

In addition, the amended law broadens the definition of "family member" for both New York City sick time purposes and safe time to include any individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship. This provides employees with significant flexibility in determining who qualifies as a family member for whom they may use sick time or safe time. Employers will be more constrained in asking for proof of relationship or substantiating the need for leave.

What does this Mean for Agencies?

Home care agencies have been subjected to aggressive enforcement activity in recent months, including audits by the New York City Department of Consumer Affairs. To comply with the amended law, the following should be done:

1. Agencies should promptly review and revise their sick time policies in employee handbooks.
2. Fiscal intermediaries should review and revise their personal assistant and consumer policies.
3. Written notice of these changes will have to be provided to new and existing employees by June 4, 2018. A template written notice is available on the New York City Department of Consumer Affairs' website, at <https://www1.nyc.gov/assets/dca/downloads/pdf/about/PaidSickLeave-MandatoryNotice-English.pdf>
4. Coordinators, payroll, and supervisors will have to be trained on processing requests for paid time off for "safe time" purposes.
5. To demonstrate compliance with the City's deadlines, employers will be required to retain records proving that they distributed the new policies and notices to current and new employees by June 4, 2018.

If you have any questions about the topic of this alert, please contact any one of the attorneys in our Home Care Group.



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