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July 27, 2026

AMENDED NEW YORK CITY EARNED SAFE AND SICK TIME ACT (ESSTA) AND WAGE STATEMENTS

Effective February 22, 2026 New York City amended its Earned Safe and Sick Time Act ("ESSTA") to provide that employees working in New York City must now receive 32 hours of ***unpaid*** leave at time of hire and annually. This 32 hours of unpaid annual leave is in addition to New York City and New York State's existing requirements for employers to provide (i) all employees with one hour paid leave earned for every 30 hours worked (capped at either 40 or 56 hours each calendar year depending on the number of employees working for the employer and (ii) pregnant employees with 20 hours of paid prenatal care leave. Moreover, additional reasons for taking paid (and unpaid) safe/sick leave were added by these ESSTA Amendments.

Employers covered by ESSTA must do ***more*** than provide these paid and unpaid hours. Specifically, these employers must issue a new ESSTA Notice of Rights (renamed *Notice of Employee Rights: Protected Time Off*) to their employees (in the respective employee's primary language) and post such Notice in the workplace. Such Notices may be downloaded from the New York City Department of Consumer and Worker Protection's ("NYDCWP") website. Many references to "*safe/sick time*" have been replaced by the broader term "*protected time off*". Employers must also distribute detailed policies that discuss these three (3) leaves. Employers should have legal counsel prepare these policies to ensure ESSTA compliance.

The final Amended ESSTA rules also clarify paystub/wage statement requirements. Effective **July 23, 2026**, employers are required to track and report multiple separate types of leave (i.e., paid, unpaid and prenatal). On each pay stub or accompanying pay statement provided every pay period, employers must separately itemize and report the following information for an employee's protected time off:

1. The amount of paid protected time off ***accrued*** during the pay period (unpaid time and prenatal leave are granted in lump sums and not "accrued").
2. The amount of ***paid*** protected time off ***used*** during the pay period.
3. The amount of ***unpaid*** protected time off ***used*** during the pay period.
4. The amount of paid ***prenatal*** leave time ***used*** during the pay period.
5. The total remaining ***balance*** of ***paid*** protected time off available for use.
6. The total remaining ***balance*** of ***unpaid*** protected time off available for use.
7. The total remaining ***balance*** of paid ***prenatal*** leave available for use.

The final rules also provide new requirements for ex-employees. Employers must either:

A. Continue providing former employees access to the electronic payroll system for six months following separation; or
B. Provide the employee with a written statement containing required leave information no later than one week after the employee's final payday.

Relatedly, when an employee has a qualifying reason for time off and has both paid and unpaid protected time available, the employer generally must apply paid protected time off first unless the employee affirmatively chooses to draw from the unpaid bank. Only after the employee exhausts available paid protected time off may the employer rely on the unpaid bank to cover the absence.

Finally, failing to: (i) provide paid, unpaid and prenatal leave to employees pursuant to applicable law; (ii) post the new NYCDCWP Notice; (iii) issue the new NYCDCWP Notice to employees; (iv) issue an updated policy covering paid, unpaid and prenatal leaves; (v) furnish each employee wage statements with the required leave information; and (vi) furnish ex-employees with their leave balance may expose employers to substantial NYCDCWP penalties. Indeed, a complaint by one employee for failing to satisfy any of the above criteria may trigger a costly time-consuming company-wide NYCDCWP audit to determine compliance on all requirements for all employees (not including employees who are excluded from coverage by a collective bargaining agreement).

In addition to employee restitution, the NYCDCWP can impose fines on a per-employee and per-instance basis (first violation up to $500.00). Thus, midsize companies who fail to adhere to ESSTA's requirements may face tens of thousands of dollars in penalties following an audit.

Employers with questions relative to the foregoing are encouraged to contact Carmelo Grimaldi, Esq., attorney in Meltzer Lippe's Labor and Employment Group at cgrimaldi@meltzerlippe.com.