

Client Alert

The Earned Sick Time Act: City Council Adopts Mandatory Paid Sick Leave

May 9, 2013. Many New York City private sector employers will be required to provide paid sick time to their workers under a bill adopted yesterday by the City Council. Although facing a promised mayoral veto, the City Council appears to have enough votes to override it and enact the Earned Sick Time Act.

Under the proposed law, businesses with 20 or more employees will be required to provide up to five paid sick days (i.e., up to 40 hours) per year commencing on April 1, 2014. By October 1, 2015, the law would be extended to employers with 15 or more employees. All employees—including part time employees—are to be counted in determining whether an employer meets the law's thresholds. Presently, New York City businesses—similar to business entities in most other jurisdictions—are not required to offer paid time off.

Those employers with workforces below the statutory thresholds would nonetheless be required to provide their employees with five unpaid sick days per year. In other words, employees of these “small employers” cannot have their employment adversely affected (e.g., through discipline or termination) should they need to take these days off in order to care for themselves or a sick family member.

Eligible employees under the proposed law would accrue sick leave at the rate of one hour of paid leave for every 30 hours of work, beginning from the employee's date of hire or on the date the law becomes effective, whichever is later, up to a total of 40 hours per year. Employees, however, would not be permitted to use their paid or unpaid sick leave until they have been employed for at least 120 days.

For employers required to provide paid sick days, an employer would have the option at the end of each applicable year to pay the employee for any accrued, but unused sick leave, or permit the employee to carry over the accrued leave, up to a maximum of 40 hours. No employer, however, would be required to provide more than 40 hours of sick leave to an employee during any calendar year. Different rules would apply if the employer in question is also a Family Medical Leave Act employer (i.e., one employing 50 or more full time employees) which requires its

employees to take their paid days off prior to taking unpaid protected leave time. Unlike accrued unused vacation, employers will not be required to pay terminated employees for their accrued, unused paid sick days under the new bill unless the employer has already implemented a policy to do so.

If you require any additional information about the Earned Sick Time Act or any other employment issues, please contact:

Jeffrey Englander
(212) 735-8720

Keith Markel
(212) 735-8736