

## New York City Amends Earned Safe and Sick Leave Law to Provide Additional Unpaid Leave for Employees and Codifies Paid Prenatal Leave

The New York City Council has enacted a series of amendments to the City’s Earned Safe and Sick Time Act (ESSTA) and the Temporary Schedule Change Law (TSCL), which went into effect on February 22, 2026. These recent amendments to ESSTA (“ESSTA Amendments”) include providing employees with unpaid safe/sick time (in addition to paid safe/sick time), broadening the reasons for use, codifying paid prenatal leave (which went into effect on July 2, 2025), and amending coverage where a collective bargaining agreement (CBA) exists covering applicable employees. The amendments to the TSCL (“TSCL Amendments”) minimize coverage under the original law and implement changes that align with coverage under ESSTA.

Since ESSTA went into effect in April 2014, it has undergone a series of amendments. Most recently, ESSTA was amended to provide eligible employees with an additional 20 hours of paid prenatal leave, available for use over a 52-week period, beginning on their first date of employment. As of June 2025, employees are eligible for paid prenatal leave under ESSTA, as well as under the [NYS PSL](#).

It also appears that the City has changed the name of ESSTA to the “The Protected Time Off Law.” While this change is reflected on the NYC Department of Consumer and Worker Protection (DCWP) website, as well as the updated [Frequently Asked Questions](#) and [Notice of Employee Rights](#), it is not codified in the ESSTA Amendments. (For the purpose of this article, we will not refer to the law as the Protected Time Off Law, but ESSTA or the ESSTA Amendments).

### **ESSTA Overview**

Under ESSTA, employers must provide employees with safe/sick time based on the size of their employee population; employers with 5 - 99 employees must provide employees with at least 40 hours of safe/sick time in a calendar year and employers with more than 100 employees must provide at least 56 hours of safe/sick time in a calendar year. ESSTA places further requirements on employers related to accrual versus frontloading safe/sick time off, carryover, balance notifications, written policies and documentation, employee notice, record keeping, and increments of use, amongst other things.

ESSTA also imposes penalties on employers for non-compliance. Within two years of knowing of the alleged violation, an individual may file a complaint with the New York City DCWP or file a civil action directly with the court. The DCWP may impose penalties ranging from \$250 to \$2,500 per violation or instance, depending on the specific violation, and may include additional damages of full compensation including wages and benefits loss, equitable relief, and reinstatement (and civil courts can award the same penalties). Further, employers may incur administrative damages via proceedings before the DCWP in the amount of \$50 per employee who is not given the Notice of Employee Rights.

## ESSTA Amendments

As noted, the recent ESSTA Amendments went into effect on February 22, 2026, providing employees with unpaid safe/sick time, broadening the reasons for use to align with the TSCL, codifying paid prenatal leave, and amending coverage where there is a CBA in place.

Further, the [DCWP has released proposed rules](#), reflecting the enforcement of the ESSTA Amendments. A public hearing regarding the proposed rules was held on March 2, 2026, the comments period is now closed, and we await further amendments to such rules.

### Unpaid Safe/Sick Time

Under the ESSTA Amendments, in addition to paid safe/sick time, employers of all sizes must also provide an employee with a minimum of 32 hours of unpaid safe/sick time. This unpaid protected leave must be available to an employee upon hire and on the first day of each calendar year. Further, there is no waiting period for use; it must be available to the employee immediately. An employer is not required to carry over unused, unpaid safe/sick time into the following calendar year. Where an employee does not specify whether they would like to use paid or unpaid safe/sick leave to cover an absence from work, the employer can utilize paid time (if available) before unpaid time. The employer must use unpaid time off, however, where paid time off is unavailable to the employee (e.g. the employee has not accrued sufficient paid time off for use) or the employee specifically requests to use the unpaid time off.

### Additional Covered Reasons for Use and Interaction with the Temporary Schedule Change Law

The ESSTA Amendments expand upon the reasons for use of both paid and unpaid safe/sick time.

Regarding sick time, employees may use protected leave for absences from work due to:

- The employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care
- Care of the employee's family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care
- Closure of the employee's place of business by order of a public official due to a public health emergency, a public disaster, or such employee's need to care for a child whose school or childcare provider closed or restricted in-person operations by order of public official due to a public health emergency or public disaster
  - ESSTA defines "public disaster" as "an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York."
- Direction by a public official to remain indoors or avoid travel during a public disaster which prevents the employee from reporting to their work location

(Updated reasons for use under ESSTA Amendments are underlined, above).

Note, for absences of more than three consecutive workdays, an employer may require reasonable documentation for the use of sick time. "Reasonable documentation" constitutes "documentation signed by a licensed health care provider indicating the need for the amount of sick time taken" and the employer cannot "require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law." Note, if the healthcare provider charges the employee for providing such documentation, the employer must reimburse the employee.

Regarding safe time, employees may use protected leave for absences from work due to:

- The employee or employee's family member being the victim of domestic violence, pursuant to New York City law, a family offense matter, sexual offense, stalking, workplace violence, or human trafficking:
  - to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking
  - to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking
  - meet with a legal or social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing or discrimination
  - to file a complaint or domestic incident report with law enforcement
  - to meet with a district attorney's office
  - to enroll children in a new school
  - to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.
    - The ESSTA Amendments define workplace violence as "any act or threat of violence against an employee that occurs in a place of employment."
- The employee being a caregiver for a minor child or care recipient, to provide care to the minor child or care recipient
  - The ESSTA Amendments define "caregiver" as "a person who provides direct and ongoing care for a minor child or care recipient." "Care recipient" is defined as "a person with a disability, including a temporary disability who is the caregiver's family member or resides in the caregiver's household and who relies on the caregiver for medical care or to meet the needs of daily living." "Minor child" is defined as "a child under the age of 18."
- The employee needing to initiate, attend or prepare for a legal proceeding or hearing related to subsistence benefits or housing to which the employee, the employee's family member, or the employee's care recipient is a party, or to take actions necessary to apply for, maintain, or restore subsistence benefits or shelter for the employee or their family member or care recipient.

(Updated reasons for use under ESSTA Amendments are underlined, above).

Like for sick time, for absences of more than three consecutive workdays for safe time, an employer may require reasonable documentation. Under the ESSTA Amendments, "reasonable documentation" constitutes "documentation signed by an employee, agent, or volunteer of a legal or social services provider, court or government agency, school or care provider, an attorney, a member of the clergy, or a medical or other professional service provider; a police, agency or court record; or a notarized letter from the employee explaining the need for such time." Further, an employer cannot "require that such documentation specify the details of the underlying need for the safe time" and the employer must reimburse the employee for reasonable costs associated with obtaining such documentation.

The final two, listed safe time reasons are covered under New York City's Temporary Schedule Change Law.

#### Paid Prenatal Leave

The ESSTA Amendments codify the NYC paid prenatal leave requirements that went into effect in June 2025. Under this provision, employers are required to provide eligible employees with 20 hours of paid prenatal leave within a 52-week period. Paid prenatal leave is not accrued. The entire 20 hours must be immediately available to

employees. Paid prenatal leave can be taken in hourly increments and while employers can set reasonable minimum increments for use, such a minimum increment cannot exceed one hour per day. Further, employers are not required to pay out unused prenatal leave at the end of the year or at any other time. There is no waiting period for usage of paid prenatal leave, and employers cannot require employees to exhaust other leave balances, including paid and unpaid safe/sick time, in order to access their paid prenatal benefits.

Only employees directly receiving health care for pregnancy are eligible for paid prenatal leave. Therefore, employees who are not pregnant cannot use paid parental leave to attend a pregnant partner or family member's appointment (but they may use other forms of leave, such as safe/sick time, to attend such an appointment). Eligible employees may use paid prenatal leave to receive care during pregnancy or related to their pregnancy including: (a) physical exams, (b) medical procedures, (c) monitoring, (d) testing, (e) discussions with a health care provider, (f) end of pregnancy care, or (g) fertility treatment.

Finally, employers may not ask eligible employees about the specific prenatal care received.

#### Changes to Collective Bargaining Provisions

The ESSTA Amendments also include several updates for employees covered by CBAs. Under ESSTA, some employees covered by a CBA were exempt from ESSTA benefits. Under the ESSTA Amendments, the law does not apply to employees covered by a valid CBA if (and only if) "(i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for superior or comparable benefits for the employees covered by such agreement in the form of paid or unpaid time off; such time off shall be in the form of leave, compensation, other employee benefits, or some combination thereof." "Comparable benefits" now "include, but are not limited to, vacation time, personal time, and holiday and Sunday time pay at premium rates, provided however that unpaid time off shall not be considered a comparable benefit for purposes of paid safe/sick time or paid prenatal leave." (All amended language underlined). The ESSTA Amendments, like in ESSTA, do not apply to employees employed in the construction or grocery industry who are covered by a CBA where such provisions "are expressly waived" in the CBAs. Thus, the proviso regarding comparable or superior benefits in the CBA does not appear to apply to such employees.

#### Temporary Schedule Change Law Amendments

Prior to the ESSTA Amendments, employees could request two temporary schedule changes per calendar year for personal events. As noted above, under the ESSTA Amendments and additional TSCL Amendments, these reasons are now covered safe time reasons.

The TSCL Amendments define a "temporary change" as "a limited alteration in the dates, hours, times or locations where an employee is expected to work, including, but not limited to, using paid or unpaid time off, working remotely, swapping shifts with another employee, or shifting work hours to earlier or later in the work week or workday." Therefore, under the TSCL Amendments, employees still have the right to request temporary changes to a work schedule. Under the TSCL Amendments, however, an employer "may grant or deny a temporary change to an employee's work schedule" and "is not required to agree to an employee's requested temporary change." The employer must respond to the employee "as soon as practicable." Further, employers can propose alternative temporary changes, but the employee is not required to accept such alternatives. So, while the TSCL still remains in place, in conjunction with the expansion of the ESSTA Amendments, employers are no longer required to grant temporary changes, but they must respond.

The TSCL Amendments maintain and amend some of the exceptions to the law. First, the law now does not apply to employees covered by a CBA, which "expressly waives the provisions" covered by the law and "addresses temporary changes to work schedules" (Amended language underlined). Second, the TSCL Amendments, like the TSCL, do not cover some employees who work in the film or television industry and employees who work fewer than

80 hours in the City in a calendar year. Temporary schedule changes are now available to employees who have been employed for fewer than 120 days.

### Next Steps for New York City Employers

New York City employers should take prompt action to ensure compliance with the ESSTA Amendments and TSCL Amendments. This includes review of existing paid time off policies, employee handbooks, employment agreements, and other related agreements and policies to determine whether revisions must be made in light of recent legislation.

Further, employers should distribute the updated [Notice of Employee Rights](#) to current employees and new hires as soon as possible as the law requires it be distributed within 30-days of the ESSTA Amendments (i.e. March 24, 2026).

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### Key Contacts

Our [Labor & Employment Law](#) team is available to assist employers in attaining compliance with all New York Labor Laws, including the New York City ESSTA and TSCL and related amendments, as well as responding to related complaints and investigations, in addition to any other employment law issues.

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