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Employee Benefit Plan Review

New York City Adopts Amended Sick and Safe Leave Rules

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New York City's Department of Consumer and Worker Protection (DCWP) has adopted amended rules under the Earned Safe and Sick Time Act (ESSTA) that took effect on July 23, 2026. The amended rules provide important guidance on employer compliance obligations following significant ESSTA amendments that became effective on February 22, 2026. New York City employers should review the amended rules now and assess whether policy, payroll, record-keeping, and leave-administration changes are needed.

Overview of New York City's Earned Safe and Sick Time Act

ESSTA requires employers to provide full- and part-time employees working in New York City with time off for health-related reasons (sick time) and safety-related reasons (safe time). Employers with 100 or more employees must provide up to 56 hours of paid leave per year, while employers with five to 99 employees must provide up to 40 hours of paid leave. Employers with four or fewer employees must also provide up to 40 hours of leave, although the leave may be unpaid if the employer's net income falls below a specified threshold. Leave accrues at a rate of one hour for every 30 hours worked.

Effective February 22, 2026, ESSTA was significantly amended to expand the authorized reasons for using safe and sick time, including responding to a public disaster or workplace violence, caring for a child or care recipient, and attending legal proceedings related to subsistence benefits or housing. The amendments also required employers to provide an additional 32 hours of unpaid leave that is immediately available upon hire and at the start of each calendar year, as well as 20 hours of paid prenatal leave in any 52-week period.

What the Amended Rules Mean for Employers

DCWP is responsible for enforcing ESSTA and issuing implementing rules. In June 2026, DCWP amended its rules related to ESSTA in light of ESSTA's recent amendments. The amended rules add detail to several core compliance obligations and create important operational considerations for employers.

Key provisions include the following:

- *Updated "Protected Time Off" Terminology*: The amended rules replace "safe/sick time" with "protected time off," a term that also covers the 32 hours of immediately available unpaid leave employers must provide upon hire and on the first day of each calendar year. Paid prenatal

leave remains a separate category. In practice, safe/sick time and protected time off will be used interchangeably.

- *Administration of Immediately Available Hours*: The amended rules confirm that employees absent for a reason covered by ESSTA must have access to at least 32 additional hours of unpaid protected time off that are immediately available upon hire or at the start of each calendar year. These hours may be used only if the employee has not yet accrued enough protected time off, has reached the employer's annual cap, or specifically requests to use this unpaid leave. Employers are not required to carry over unused hours to the following year and may set a reasonable daily minimum increment of up to four hours. Importantly, the amended rules clarify that employers may satisfy all or part of the 32-hour obligation with paid leave, including where doing so is necessary to comply with the Fair Labor Standards Act salary-basis test or other legal obligations. Employers must also reinstate unused immediately available hours and accrued protected time off when rehiring an employee within the same calendar year.
- *Expanded Written Policy Requirements*: Employers must maintain a single written policy covering both protected time off and paid prenatal leave and distribute it upon hire, within 14 days of any changes, and upon request. The policy must address, among other topics, the accrual method, prenatal leave, notice and documentation requirements, minimum increments, discipline for misuse, confidentiality, carryover, and the 32 immediately available hours of unpaid leave. Failure to maintain or distribute a compliant policy creates a presumption that the employer does not provide, or refuses to provide, protected time off in violation of ESSTA.

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- *Pay Statement and Electronic-System Obligations*: The amended rules require pay statements to differentiate between paid and unpaid protected time off used and available. Employers that use electronic systems must also provide former employees either six months of continued access or, within one week after the employee's last payday, a written statement that includes:
  - Protected time off accrued during that pay period;
  - Protected time off used during that pay period, differentiating between paid and unpaid protected time off;
  - Total balance of protected time off;
  - Protected time off available for use, differentiating between paid and unpaid;
  - Paid prenatal leave used that pay period; and
  - Total paid prenatal leave balance.
- *Documentation for Covered Absences*: For non-safe-time-related protected time off lasting more than three consecutive work days, employers may require reasonable documentation. The amended rules provide that documentation showing the reason for the amount of protected time off taken is reasonable, and employers must reimburse employees for documentation-related fees and costs.
- *Record-Keeping Requirements*: Employers must retain records for three years showing the amount of protected time off used and available, broken out by paid and unpaid leave, as well as the amount of protected time off and paid prenatal leave accrued. If an employer fails to maintain adequate records, DCWP will presume that the employer is violating ESSTA.
- *Enforcement Exposure and Penalties*: If DCWP finds that an employer maintains a policy of not providing protected time off, the employer must grant every affected employee relief of up to twice the annual maximum in accrued hours, $500 per employee per calendar year, and—beginning July 23, 2026—32 hours of unpaid protected time off. For paid prenatal leave violations, employers must add 20 hours of paid prenatal leave to the employee's leave balance, plus $500 per employee for each calendar year in which the unlawful policy or practice was in effect. Given these penalties and employees' ability to seek relief through civil actions, employers should treat compliance as a priority.

Employer Action Items

- Review and update New York City leave policies and distribute any revised written policy within 14 days of adoption.
- Confirm that payroll, HRIS, and leave-administration systems can correctly administer the 32 immediately available unpaid

hours, including paid-before-unpaid sequencing, optional satisfaction with paid leave, and reinstatement upon rehire within the same calendar year.
- Assess whether pay statements and electronic systems distinguish between paid and unpaid protected time off used and available and whether post-separation access procedures satisfy the amended rules.
- Review documentation, reimbursement, and record-retention practices to ensure they align with the amended rules.
- Train human resources personnel, payroll teams, and leave administrators on the new requirements.

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