

# LABOR & EMPLOYMENT

>>ALERT

## NYC EXPANDS EMPLOYEE RIGHTS TO REQUEST TEMPORARY WORK SCHEDULE CHANGES AND USE PAID SICK TIME FOR “SAFE TIME” PURPOSES

Beginning on July 18, 2018, New York City employers will be required to consider and permit employee requests for 2 temporary schedule changes per calendar year due to certain personal events. In addition, under New York City’s Earned Safe and Sick Time Act (ESSTA), which becomes effective on May 5, 2018, the number of permissible reasons for which employees may take paid sick time has expanded.

### EMPLOYEE REQUESTS FOR TEMPORARY WORK SCHEDULE CHANGES

Under an amendment to New York City’s Administrative Code, eligible employees will be entitled to request a temporary schedule change up to 2 times per year for up to 1 business day per request. If an employer allows an employee to use 2 business days for 1 requested schedule change, the employer is not required to grant a second request.

Temporary schedule changes can be requested by employees for “personal events,” which include:

- 1) the need for a caregiver to provide care to a minor child or care recipient;
- 2) the need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee’s care recipient is a party; or
- 3) any circumstance that would constitute a basis for the permissible use of safe time or sick time under ESSTA.

### THE BOTTOM LINE

New York City employers should act quickly to ensure compliance with new laws that expand employee rights to request temporary schedule changes and use paid sick time for “safe time” purposes. At a minimum, employers should update employee handbooks to: (1) explain the procedures that eligible employees should follow when requesting temporary work schedule changes and employer obligations to respond to these requests; and (2) describe the expanded “safe time” reasons for which paid sick leave may be used by eligible employees and the expanded definition of “family member” for sick and safe time purposes. Employers should also provide a revised notice to employees regarding the use of sick and safe time prior to June 4, 2018.

A “temporary change” in schedule is defined as a limited alteration in the hours, times or locations where an employee is expected to work, including, but not limited to, using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave.

An employee who requests a temporary schedule change must notify his/her employer or direct supervisor as soon as the employee becomes aware of his/her need for a temporary change in work schedule. The initial request does not have to be in writing, but the law requires the employee to

subsequently put the request in writing as soon as is practicable, and no later than the second business day after the employee’s return to work. The request must indicate the date for which the change was requested and that it was due to a personal event.

Employers are required to “respond immediately” to the request, but are not required to put the initial response in writing. As soon as is practicable, and no later than 14 days after the employee submits the request in writing, the employer must provide a written response, which can be by e-mail.

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An employer's written response must include: (1) whether the employer will agree to the temporary change to the work schedule in the manner requested by the employee, or if the employer will otherwise provide the temporary change to the work schedule as leave without pay (which is not considered a denial); (2) if the employer denies the request for a temporary change to the work schedule, the employer must include an explanation for the denial; and (3) how many requests have been made and how many business days the employee has left in the calendar year after taking into account the employer's decision.

If the employee fails to submit a written request for a temporary schedule change, the employer is not obligated to respond in writing.

The law excludes a few categories of employees, including employees who have been employed for fewer than 120 days; employees who do not work for at least 80 hours in a calendar year within New York City; and employees who are covered by a collective bargaining agreement, if such agreement waives the provisions of this law and addresses temporary changes to work schedules.

### "SAFE TIME" UNDER THE EARNED SAFE AND SICK TIME ACT

As discussed in a previous Davis & Gilbert [Alert](#), New York City's sick time law requires employers with 5 or more employees to provide up to 40 hours of paid sick time per year to eligible employees.

Under the ESSTA, employers must allow employees to take paid sick time for additional "safe time" reasons.

When an employee or a family member has been the victim of a family offense matter, sexual offense, stalking or human trafficking, ESSTA provides that the employee is entitled to use safe time for absences from work due to any of the following reasons, including to:

- >> obtain services from a domestic violence shelter, rape crisis center or other shelter or services program;
- >> participate in safety planning, temporarily or permanently relocate or take other actions to increase the safety of the employee or family member;
- >> meet with a civil attorney or other 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, discrimination in employment, housing or consumer credit;
- >> file a complaint or domestic incident report with law enforcement;
- >> meet with a district attorney's office;
- >> enroll children in a new school; or
- >> take other actions necessary to maintain, improve or restore the

physical, psychological or economic health or safety of the employee or family member or to protect those who associate or work with the employee.

Employers may require reasonable documentation for an absence of more than 3 consecutive work days for safe time purposes.

ESSTA has also expanded the definition of "family member" for paid sick and safe time purposes. "Family member" now includes 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."

Employers will be required to provide employees with notice of their rights to safe time under the ESSTA on or before June 4, 2018. The New York City Department of Consumer Affairs is expected to issue a revised Notice of Rights on its [website](#) prior to the deadline for compliance.

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