

# LABOR & EMPLOYMENT

>>ALERT

## NYC SICK TIME LAW AMENDED TO ALIGN WITH NEW YORK STATE LAW

### UPDATE AS OF OCTOBER 28, 2020

The NYC Department of Consumer and Worker Protection (DCWP) has issued an updated [ESSTA Notice of Employee Rights](#) regarding safe and sick leave. All NYC employers should add this updated Notice to new hire onboarding materials. The DCWP has also confirmed that employers with 100+ employees are required to distribute the Notice to all employees by January 1, 2021.

As reported in our [previous alert](#), the New York State paid sick leave law (the NYS Law) went into effect on September 30, 2020.

On September 28, 2020, Mayor de Blasio signed into law a bill amending the New York City Earned Safe and Sick Time Act (ESSTA) to be consistent with the NYS Law — that bill also went into effect on September 30, 2020.

### MAJOR CHANGES TO THE ESSTA

Below is a summary of key changes to the ESSTA as a result of the new bill:

>> Employers must now list the amount of safe and sick leave accrued and used during each pay period, as well as the employee's total balance of safe and sick leave, on a pay statement or other written document provided to the employee each pay period.

### THE BOTTOM LINE

Employers should review and revise their sick time policies and any paid time off policies used to satisfy the requirements of the NYS Law and/or ESSTA to ensure that they comply with the new requirements.

Employers should also prepare to notify their employees by **October 30, 2020** of the changes to the ESSTA, and they should monitor the DCWP website for the updated notice to provide to employees.

>> The bill revises the amount of safe and sick leave that employers must provide to employees to align with the amounts set forth under the NYS Law. Specifically:

- Employers with 4 or fewer employees with a net income of less than \$1 million in the previous tax year must provide up

to 40 hours of unpaid safe and sick leave per calendar year;

- Employers with between 5 and 99 employees, and employers with 4 or fewer employees and a net income of more than \$1 million in the previous tax year, must provide up to 40 hours of paid safe and sick leave per calendar year; and

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- Employers with 100 or more employees must provide up to 56 hours of paid safe and sick leave per calendar year.
  - >> The bill eliminates the 120-day waiting period to use accrued safe and sick leave — that leave can now be used as it is accrued. However, employers may restrict employees who will be accruing additional safe and sick leave under the amended ESSTA from using that time until January 1, 2021.
  - >> Employers must reimburse employees for certain costs and/or expenses incurred by employees to obtain a doctor's note or other documentation requested by the employer to verify that the safe and sick leave is being used for an ESSTA-covered reason.
  - >> The bill expands the definition of the types of adverse actions that may constitute retaliation for and/or interference with an employee's exercise or attempt to exercise his or her rights under the ESSTA — these include: threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, informing another employer of an employee's exercise of ESSTA rights, maintenance of an attendance policy that counts ESSTA safe and sick leave as an absence that may lead to discipline, and actions related to perceived immigration status or work authorization.
  - >> The bill indicates that any standard under the NYS Law that exceeds what is provided under the amended ESSTA will be enforced by the NYC Department of Consumer and Worker Protection (DCWP) and subject any violator to the penalties and remedies available under the NYS Law.
  - >> Employers must notify employees of the changes to the ESSTA within 30 days of the bill's effective date (September 30, 2020).
  - >> The bill does not appear to disturb the DCWP's interpretation of the ESSTA, in its [FAQs](#), to allow employers to avoid carryover and tracking of accruals as long as they front-load the requisite number of safe and sick leave hours (i.e., 40 or 56 hours) at the beginning of each calendar year. However, as discussed in our [prior alert](#), it is not yet clear whether the NYS Law will be interpreted the same way.
- The DCWP website currently states that it is in the process of updating and translating materials — this presumably includes the “Notice of Employee Rights” that must be provided to employees.

### FOR MORE INFORMATION

Gregg Brochin  
Partner  
212.468.4950  
gbrochin@dglaw.com

Judith Kong  
Associate  
212.468.4851  
jkong@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP  
212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

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