



New York City Earned Sick Time Act **Up to 40 Hours Annually**

New York City's Earned Sick Time Act (originally passed [in 2013](#) and amended [twice in 2014](#)) takes effect on April 1, 2014. Beginning that day, an employee who works more than 80 hours per calendar year for an employer with at least five employees must accrue up to 40 hours of paid sick leave each year at his/her regular hourly rate (but not less than New York State's minimum wage). The Act covers most types of employers and employees.

An employee will be eligible for one hour of paid sick leave for every 30 hours that he/she works. A salaried employee will be assumed to work 40 hours per week unless he/she typically works fewer hours, in which case he/she will accrue sick leave hours based on his/her regular number of hours worked. Employers with fewer than five employees must offer up to 40 hours of unpaid sick leave per calendar year to any employee that works at least 80 hours in that year. Domestic service workers (*not* home health aides) who work more than 80 hours in a calendar year for the same employer will receive two paid sick days after one year with that employer. Current employees as of April 1, 2014, will begin accruing sick time on that date, and may begin using any hours earned on July 30, 2014. Anyone hired thereafter will accrue time from his/her first day of employment, and may use it after 120 days.

In addition to an employee's own sickness, he/she may use sick leave hours for:

1. Preventive medical care;
2. When the Employer is closed due to a public health emergency;
3. Caring for a child whose school or day care is closed due to a public health emergency; or
4. Caring for a family member who is ill or needs preventive medical care.

Under the Act, family members include an employee's:

1. Spouse or Domestic Partner;
2. Child;
3. Parent;

4. Child or Parent of the Employee's Spouse or Domestic Partner;
5. Sibling (including a half, adopted, or step-sibling);
6. Grandparent; or
7. Grandchild.

Employers may have a policy requiring employees to use a minimum amount of sick leave time per absence, but this minimum may not be more than four hours. When an employee can anticipate needing to use sick leave, the employer may request up to seven days of advance notice. If unforeseeable circumstances arise, the employer may require notice as soon as reasonably possible. The employer may also require written documentation from a licensed health care provider that an employee needed to use sick leave if his/her absence exceeds three consecutive workdays. However, the employer may not ask for specific details except to the extent required in order to comply with other laws, such as the Americans with Disabilities Act (ADA). For shorter absences, an employer may only request written verification from the employee that he/she used accrued sick leave for eligible purposes. While an employer may discipline an employee found to have misused sick leave, it may *not* retaliate against an employee who properly asserts his/her rights under the Act. Employers may allow employees to carry over up to 40 hours of earned sick leave from one calendar year to the next or may pay out unused sick leave at the end of the year. However, even if employees carry over unused sick leave, employers do not have to let employees use more than 40 hours in any calendar year, nor do they have to pay out unused sick time at termination.

The Earned Sick Time Act requires employees to receive a notice of their rights. New York City's Department of Consumer Affairs (DCA) has already published a model notice in English and Spanish on its [website](#), and will post translations in several other languages, including Chinese. An employee is entitled to receive the notice in English and in his/her primary language if DCA offers a translation in that language. The notice provides blank spaces for the start and end date of each 12-month calendar year (as determined by the employer). Employers must provide the notice to current employees by May 1, 2014, while new employees must receive it on their first day of employment.

Employers must keep records demonstrating their compliance with the Act for three years, and must provide these to DCA upon advance request. Employees have two years to file a complaint with DCA for an alleged violation. Following an investigation, employers who receive a notice of violation will have the option to settle without a hearing or go before DCA's Adjudication Tribunal. There, an employee may be awarded the greater of \$250 or three times the wages he/she lost for validly taken sick leave that was not paid. A retaliatory firing may result in the award of \$2,500 plus lost wages and benefits, and possibly reinstatement. Noncompliance may also result in civil penalties to DCA of \$500 for a first violation and up to \$1,000 for committing additional violations within two years of a previous violation. Employers with less than 20 employees will not be penalized for a first violation committed prior to October 1, 2014, provided that they pay lost wages and benefits to affected employees as warranted.

The Earned Sick Time Act does *not* cover independent contractors, or any licensed physical therapist, occupational therapist, speech language pathologist or audiologist who can determine his/her own work schedule, accept or reject any assignment referred to him/her, and is paid at least four times the minimum wage. Employees in the grocery or construction industries covered by a collective bargaining agreement signed after April 1, 2014 will *not* be covered by the Act if their contract expressly waives such rights. In other industries, a collective bargaining agreement waiving employee rights under the Act must provide comparable benefits.

Employers who already have sick leave policies will be in compliance with the Act if those policies *meet or exceed* all of the minimum requirements, including accrual rates, permitted uses of sick leave and the employee notice and compliance documentation requirements. As a specific example, paid vacation time qualifies towards the Act if employees can use it in the same manner as a formal sick leave benefit. Home care providers should be particularly aware that sick leave provided under the Act may be counted towards the \$1.69 per hour additional wage required under New York State's wage parity law for aides working in New York City.

DCA will hold a hearing on April 29, 2014, regarding [proposed rules](#) to implement the Act. The rules include provisions such as a ban on employers requiring employees to use another form of paid or unpaid leave in conjunction with sick time, except as required by other state or federal laws, a requirement that sick time be paid no later than the payday for the next regular payroll period beginning after the employee used it, and that DCA may initiate investigations into potential violations on its own in some cases.

DISCLAIMER: The information contained herein is provided by Glaser & Weiner, LLP for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2014 Glaser & Weiner, LLP. All Rights Reserved.