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Amendments to NYC's "Protected Time Off" Rules Now In Effect

New York City's Department of Consumer and Worker Protection has formally adopted amended rules related to NYC's Earned Safe and Sick Time Act (ESSTA), effective July 23, 2026.

These updated rules modify definitions, documentation and notification requirements, and enforcement procedures concerning the leave policies of employers with employees in New York City. The rules additionally require employers to provide employees with 32 hours of immediately available protected leave under certain circumstances. Employers should review their policies, handbooks, payroll systems, and manager practices to ensure timely compliance with these amendments.

Context of Amended Rules

The ESSTA requires employers to provide New York City-based employees with time off for health- and safety-related reasons, known as "safe/sick time." The ESSTA provides accrual mechanisms for determining how much paid leave to provide employees based on the size of the employer. In February 2026, the New York Legislature amended the ESSTA, expanding the authorized reasons for using safe/sick time, and requiring employers to provide an additional 20 hours of paid prenatal leave in any 52-week period and 32 hours of immediately available unpaid leave at the time of hire and on the first day of every calendar year.

The department is responsible for implementing rules to enforce the ESSTA. Accordingly, effective July 23, 2026, the department amended its rules to align with the ESSTA's amendments and provide clarification concerning their enforcement.

Definition of "Protected Time Off"

Under the department's amended rules, "protected time off" has the same meaning as "safe/sick time" under the ESSTA. Specifically, "protected time off" means paid or unpaid leave provided to an employee for any of the following reasons or purposes:

- Caring for an employee's or family member's health;
- Responding to a public health emergency or disaster;
- Taking safety measures when the employee or family member has been the victim of domestic violence, sexual offense, stalking, workplace violence, or human trafficking;
- Caring for a minor child or care recipient; or
- Taking certain actions relating to subsistence benefits or housing.

The amended rules further confirm that "protected time off" must be provided to employees separate and apart from 20 hours of paid prenatal leave during any 52-week calendar period.

Addition of "Immediately Available Hours" of Protected Leave

The amended rules confirm that employers must provide all employees 32 hours of unpaid protected time off, which may be used by the employee immediately for any of the reasons for which "protected time off" may be used. The employer must provide such "immediately available hours" to all employees upon date of hire and again on the first day of each calendar year. The employer is not required to carry over unused "immediately available hours" to the following calendar year.

If an employee is absent for any reason for which protected time off may be used, and the employee has both paid and unpaid protected time off available, the employer must provide paid protected time off unless the employee specifically requests to use unpaid protected time off.

An employer may fulfill its obligations to provide "immediately available hours" of protected leave by providing some or all those hours as paid protected time off. However, providing such immediately available paid leave does not otherwise affect the employer's separate obligation to provide paid protected time off under the ESSTA's accrual mechanisms. Employers should pay employees for this immediately

available protected time off when necessary to comply with other legal obligations or to meet criteria for an overtime exemption under state or federal law, such as the Fair Labor Standards Act's salary-basis test.

The amended rules further require employers to update their written protected time off policy to expressly address the amount of unpaid protected time off that they provide and indicate that at least 32 hours of unpaid protected time off is immediately available to all employees on the first day of employment and the first day of each calendar year.

Re-Hiring Former Employees

If a former employee is re-hired within the same calendar year of their employment separation, the employer must reinstate the former employee's unused immediately available hours.

Documentation and Consistent Notifications to Employees

The amended rules added several documentation and notification requirements relating to employees' use of protected time off.

Documentation Maintenance

In addition to documentation requirements already in effect, the amended rules also require employers to maintain contemporaneous records that show for each employee, for each pay period:

1. The amount of paid protected time off accrued pursuant to the ESSTA;
2. The amount of protected time off used, differentiating between paid and unpaid protected time off;
3. The employee's total balance of accrued paid protected time off pursuant to the ESSTA;
4. The amount of protected time off available for use by the employee, differentiating between paid and unpaid protected time off;
5. The amount of paid prenatal leave used; and
6. The employee's total balance of paid prenatal leave.

This documentation must be maintained for three years in formatting accessible to each employee.

Notification Requirements During Employment

The amended rules also updated notice requirements to employees concerning their used and available protected time off. Like before, employers must notify employees of certain leave-related information either on each pay statement or in written documentation provided to the employees each pay period. Specifically, employers must regularly inform their employees of:

1. The amount of protected time off accrued and used during the relevant pay period, differentiating between paid and unpaid protected time off;
2. The total balance of accrued paid protected time off available for use under the ESSTA; and
3. The total balance of unpaid protected time off available for use.

If the employee uses prenatal leave, the employer must, using the same notification mechanisms, inform the employee of the amount of paid prenatal leave used during the relevant pay period and the total balance of paid prenatal leave available for use.

If an employer uses an electronic system to issue pay statements or other documentation related to protected time off or paid prenatal leave, the employer may comply with these notice requirements by electronically alerting the employee to the availability of the required information at each pay period; making the described content readily accessible to the employee outside of the workplace; and maintaining the content in a manner that is readily accessible to the employee for any past pay period throughout the employee's tenure.

Notification Requirements Post-Employment

Employers have additional notification obligations to former employees after their tenure. Specifically, post-employment, the employer must either:

1. Provide the employee with access to the employer's electronic system for six months, if the employer used an electronic system to issue pay statements or

documentation to comply with the notice requirements described above; or
2. Within one week following the employee's last payday, provide the employee with a written statement containing the following information from the employee's last pay period:
    1. Amount of paid protected time off accrued during the pay period under the ESSTA;
    2. Amount of protected time off used during the pay period, differentiating between paid and unpaid protected time off;
    3. Total balance of paid protected time off accrued during pay period under the ESSTA;
    4. Amount of protected time off available for use by the employee during the pay period, differentiating between paid and unpaid protected time off;
    5. Amount of paid prenatal leave used during the pay period; and
    6. Total balance of paid prenatal leave.

Updated Enforcement Mechanisms

The amended rules provide additional relief to employees for certain violations. For example, if an employer fails to provide or refuses to allow use of unpaid "Immediately Available Hours" to an employee, or has a policy inconsistent with that requirement, the employee is entitled to application of 32 hours of unpaid protected time off to his balance of protected time off.

Additionally, if an employer fails to provide or refuses to allow an employee's use of paid prenatal leave, the employee is entitled to application of 20 hours of paid prenatal leave to her paid prenatal leave balance, and $500 per calendar year.

Employer Best Practices

To ensure compliance with the amended rules, employers should take the following measures:

- Review employee handbooks, offer letters, re-hiring procedures, and other applicable policies and revise as necessary to ensure protected leave policies are compliant with the amended rules, including by adding the "Immediately Available Hours" requirements;

- Train human resources department and other employees involved in benefits, payroll, recordkeeping, and offboarding on the amended rules' requirements;
- Coordinate with payroll and benefits vendors to ensure compliance with the amended rules' notification requirements; and
- Maintain detailed records concerning employees' requests for, and use of, protected leave.

Failure to comply with these amended rules may subject employers to penalties, fines, and liability in court or with governmental agencies.

This Client Alert was drafted by Catherine Weiss Butto, an attorney in the Spencer Fane New York City office. For more information, visit spencerfane.com.

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