



## HR-Alert: New York City Amends Safe and Sick Time Rules

New York City has amended the regulations under the City's Earned Sick and Safe Time Act (ESSTA) which became effective on October 15, 2023. There are several ESSTA topics that are impacted by the final amended rules, including employer size, employee eligibility, notice requirements, documentation standards, and written policy requirements. Key aspects of these changes are outlined below.

### Employer Size

Private employers with 100 or more employees must provide up to 56 hours of paid sick and safe time each year. Smaller employers, with less than 100 employees, must provide 40 hours of leave whether that time must be paid or unpaid depends on headcount and gross revenue. The amendments clarify that if an employer increases headcount above 99 employees, they must immediately allow employees to use the additional 16 hours of sick and safe time for the rest of the calendar year. If headcount decreases, employers cannot reduce the amount of leave until the next calendar year.

Additionally, before the release of these new rules, it was unclear whether employers should only count New York City (NYC) employees or their total U.S. workforce when determining applicable ESSTA obligations. The amendments make clear that employers must count their total U.S. workforce, which includes full-time and part-time employees, employees jointly employed by one or more employers, and employees on a leave of absence.

### Employee Eligibility

Previously, employees had to work more than 80 hours in a calendar year in NYC to be eligible for leave. Given the uptick in remote and hybrid work, the rules clarify who is an NYC employee under the ESSTA. Employees are eligible for leave if they regularly perform work within NYC, or physically perform work in NYC, including working remotely in NYC, regardless of where the employer is located. Employees working outside of NYC are ineligible for leave under the ESSTA, even if they report to a location based in NYC.

### Notification Updates

In 2020, amendments to the ESSTA added a new requirement that employers show sick and safe leave usage during a pay period, as well as the balance on an employee's paystub or other form of documentation. The new rules reiterate that employers specify both the total balance and the amount of time available for use, if those two values differ (e.g., an employee with an 80-hour balance due to carryover may only have 40 hours "available" for use should the employer have an annual usage cap). These latest amendments also clarify that if an employer uses an electronic system for the purpose of this notification requirement, all of the

following must be met, 1) the employee must be alerted that the information is available for review, 2) the information is readily accessible, and 3) past accrual, usage, and balance information from prior pay periods is made available.

### Written Policy Updates

The rules outline a few important points with employer written policies. With regard to requiring an employee to provide notice of the need for leave, the rules reiterate that requiring reasonable advance notice must clearly be outlined in a written policy. Employers who provide reasonable documentation for the use of leave must also specify this in their written policy, as well as acceptable forms of documentation and the way employees should submit documentation. If an employer withholds paying sick and safe leave until such reasonable documentation is received, they must explicitly state this practice in the written policy. Lastly, the policy must now include a statement that the employer “will not ask the employee to provide details about the medical condition that led the employee to use sick time, or the personal situation that led the employee to use safe time, and that any information the employer receives about the employee’s use of safe/sick time will be kept confidential and not disclosed with anyone without the employee’s written permission or as required by law.”

### Employer Next Steps

- Covered employers may want to review existing paid sick leave or paid time off policies considering these final amended rules
- Educate and train your managers on these new requirements
- If you are an HR Support client, please reach out if you would like to review and discuss your paid time off policies

If you have any questions regarding this HR-Alert, please [email us](#).