

## NYC COUNCIL OVERWHELMINGLY PASSES MANDATORY PAID SICK LEAVE LAW

By Scott J. Wenner

Led by Mayoral candidate and Council Speaker Christine Quinn, the New York City Council has enacted the Earned Sick Time Act — a new law that mandates all employers of 15 or more employees in New York City to provide paid sick leave to workers. This paid leave requirement will phase in beginning *April 1, 2014* for all employers of 20 or more, and will target New York City employers of 15 or more 18 months later, on October 1, 2015. *Employers below the employee threshold for paid sick time also are affected: all must provide the same amount of sick leave, but without pay.*

This is the second controversial local law aimed at New York City employers that the Council has passed in the last two months. In March, that body passed a law, over the veto of Mayor Michael Bloomberg, prohibiting employers from discriminating against job applicants based on unemployment status. Mayor Bloomberg has promised a veto of the mandatory sick leave law as well, but Speaker Quinn has a more than adequate margin to override the Mayor's expected action. In addition, waiting in the wings, after contentious hearings in March, is a bill that would ban the use of credit checks in the employment process for most employers.

### The Details

- Covered employers must provide one hour of paid sick time for every 30 hours worked.
- Accrual begins on the later of date of hire or effective date of the law on employer.
- Minimum yearly sick leave accrual required: five days per year.
- Paid leave may not be used by employee before fifth month of employment.
- Employees must be paid for or permitted to carry over up to 40 hours of accrued, unused sick leave at calendar year end. No pay for unused paid sick time is required upon termination of employment, however.

- Paid leave may be taken to care for or assist a family member to obtain medical treatment or diagnostic or preventive services.
- Penalties: three times the value of unpaid wages, with a \$250 minimum, plus civil penalties of \$500 for first violation, \$750 for subsequent violations within two years and \$1,000 per violation thereafter.
- Enforcement: claims must be filed with Department of Consumer Affairs.
- Broad anti-retaliation protections for employees who use paid leave.
- Paperwork: Written notice of rights available from the Department of Consumer Affairs must be provided at hire and records demonstrating compliance must be retained for two years.
- Employers may require documentation supporting absences of more than three consecutive work days and may require employees to use a minimum number of hours per absence.

### Assessment

The passage of the Earned Sick Leave Act earlier this month was the culmination of a two-year campaign by large labor unions and several community groups focused on the New York City Council, but with an eye on jump starting a national campaign for paid sick leave. With its final enactment, which likely will be the City Council's expected vote to override the Mayor's promised veto, New York City joins Portland, San Francisco, Seattle and the state of Connecticut in mandating paid sick leave. In recent months the Philadelphia City Council passed a similar local ordinance. However, Philadelphia Mayor Michael Nutter vetoed it for the same economic reasons that Mayor Bloomberg promises to veto New York City's legislation. Philadelphia's City Council was unable to override Mayor Nutter's veto. A similar ordinance was enacted by the City

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of Milwaukee, but the Wisconsin legislature stepped in and effectively reversed the city's action for economic reasons.

Although it is broadly drafted to require all employers with more than 15 employees eventually to provide paid sick leave — and all other employers to allow unpaid sick leave — this new law unmistakably targets smaller employers, as virtually all larger employers already provide paid sick days.

However, larger employers also bear substantial compliance risks. While the financial impact of the law may be felt primarily by small and mid-sized businesses, larger employers not only must be aware of and comply with the notice and paperwork retention requirements of the law, but they also must adhere to the accrual and carryover mandates. They must ensure in addition that supervisors based in or responsible for New York City employees understand that under the new law paid sick time must be provided to employees for the expanded purposes it specifies. These include caring for or assisting a family member with an illness, or who is obtaining a medical diagnosis or preventative care.

Local politicians who supported the measure but who also are interested in courting business votes have painted the law in its final form as a “compromise” that contains pro-

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tections for business. For support they point primarily to a provision that would delay the present effective dates should the local economy falter, using the New York City Coincident Economic Index maintained by the New York Federal Reserve Bank. While there were several amendments to the original legislation agreed to by Speaker Quinn, including an increase from five to 15 in the number of employees needed to require an employer to provide paid leave and a provision for administrative rather than judicial enforcement, it is a hard sell to portray this new set of entitlements as a true compromise. ♦

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*For assistance with any of the myriad compliance issues that might affect your business under the New York City Earned Sick Leave Act, please contact:*

*Scott J. Wenner, Chair  
212-973-8115; 415-364-6705  
swenner@schnader.com*

*Michael J. Wietrzychowski, Vice Chair  
856-482-5723; 215-751-2823  
mwietrzychowski@schnader.com*

www.schnader.com

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