



December 8, 2021

NYC Child Vaccination Leave

On November 23, 2021, the NYC Council passed legislation amending the NYC Earned Safe and Sick Leave Act (“ESSTA”) to mandate that all NYC employers provide employees with paid time off for their children’s COVID-19 vaccines (“COVID-19 Child Vaccination Time”). Once signed by the Mayor, the new law will be effective retroactive to November 2, 2021.

The following summarizes the new legislation regarding COVID-19 Child Vaccination Time:

Who is entitled to COVID-19 Child Vaccination Time?	An employee who is a parent of a child under the age of 18 is entitled to 4 hours of COVID-19 Child Vaccination Time per vaccine injection, for each child, to: <ol style="list-style-type: none"> 1. Accompany such child to receive a COVID-19 vaccine; 2. Care for such child who cannot attend school or childcare due to vaccine side effects.
What vaccines are covered?	The law does not distinguish between one and two dose vaccines, or boosters.
Is COVID-19 Child Vaccination Time paid or unpaid?	COVID-19 Child Vaccination Time is paid time off. This appears to be the case even for those small employers who are otherwise just required to provide unpaid ESSTA leave. Employees are paid for COVID-19 Child Vaccination Time at their regular rate of pay.
When should COVID-19 Child Vaccination Time be paid?	COVID-19 Child Vaccination Time should be paid by the payday for the next regular payroll period beginning after the COVID-19 Child Vaccination Time was used.
Do employees need to provide any documentation?	An employer may require that an employee provide reasonable documentation that the covered child has received COVID-19 vaccine within 7 days of the employee’s use of COVID-19 Child Vaccination Time.
Can an employer require the employee to make up the time?	No. Employers may not require employees to work additional hours to make up for their absence or find a replacement to cover their absence.
What notice does the employee need to provide?	If the need is foreseeable, the employer may require reasonable advance notice not to exceed 7 days. Where the need is not foreseeable, an employer may require the employee to provide notice as soon as practicable.



NYC Child Vaccination Leave

Page 2

Is this leave in addition to other leave under ESSTA?	Yes, COVID-19 Child Vaccination Time is in addition to other leave available under ESSTA. It's also in addition to paid sick leave provided under NYS law for the employee to get their own COVID-19 vaccine.
When does COVID-19 Child Vaccination Time become effective?	Once the Mayor signs the legislation, COVID-19 Child Vaccination Time requirements will be effective retroactive to November 2, 2021.
How should employers handle the retroactivity of the new law?	Employers may pay employees who used other leave time or unpaid time for purposes covered by COVID-19 Child Vaccination Time between November 2, 2021, and the date the Mayor signs the legislation, by paying the employee for COVID-19 Child Vaccination Time used by the employee no later than the payday for the next regular payroll period beginning after this local law takes effect.
Does the new law sunset?	Yes. The legislation mandating COVID-19 Child Vaccination Time expires on December 31, 2022.
Are there penalties?	<p>Yes. For each instance of COVID-19 Child Vaccination Time taken by an employee but unlawfully not compensated by the employer: 3x the wages that should have been paid or \$250, whichever is greater. For each instance of COVID-19 vaccination time unlawfully denied or charged against an employee' paid safe/sick time accruals: \$500.</p> <p>However, the law contains a 60-day phase-in period during which DCA would give written notice and a cure period before enforcing the law against employer who do not comply.</p>

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys:

Deborah Buyer, 212-225-8483 x1, deborah@deborahbuyerlaw.com

Lydia Fan Wong, 212-225-8483 x2, lydia@deborahbuyerlaw.com

© Deborah Buyer Law PLLC 2021

These materials do not constitute legal advice or create an attorney-client relationship. The reader is advised to consult with an attorney to obtain legal advice.

U.S. Treasury Circular 230 Notice: U.S. Treasury Regulations require us to inform you that any U.S. tax advice in this communication cannot be used by you to avoid tax penalties or to promote, market or recommend to another party any transaction or matter addressed herein.