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New York City Council Super-Majority Votes to Require Paid Sick Leave

On May 8, 2013, by a vote of 45 to 3, the New York City Council enacted the Earned Sick Time Act ("Act"). The Act would require employers with at least 20 employees to provide employees with 5 paid sick days per calendar year beginning on April 1, 2014. Specifically, the Act mandates that such employees earn 1 hour of sick leave for every 30 hours worked, up to a maximum of 40 hours of sick leave per calendar year (which translates to 5 paid sick days per employee per calendar year). Employees can carry over accrued sick time to the following calendar year, subject to the 40-hour cap. As an alternative, an employer can pay its employees for any accrued but unused sick time at the end of a calendar year. There is no requirement to pay out accrued but unused sick time upon termination.

Employers with 15-19 employees must comply beginning October 1, 2015. Employers with less than 15 employees must provide a minimum of 5 unpaid sick days annually beginning April 1, 2014.

Eligible employees are those working within the borders of New York City who have been employed for at least four months. The Act will apply to full-time and part-time workers, while seasonal workers and student interns are not eligible. The Act is not a ceiling but a minimum requirement and employers may maintain or promote more generous policies if they so choose.

The Act requires employers to provide notice to their employees regarding their right to paid sick leave. The Act also contains anti-retaliation provisions prohibiting employers from taking any adverse actions against employees who exercise their right to paid sick leave. Aggrieved employees may file complaints with the Department of Consumer Affairs ("Consumer Affairs"). If Consumer Affairs determines that a violation occurred, the employer may be subject to an injunction and civil penalties up to \$500 for a first violation and \$1,000 for successive violations.

The Act was first introduced in 2009 by Council Member Gale Brewer and remained controversial. Supporters of the Act claimed that it would provide necessary job security for many workers and a healthier, more productive workforce. Opponents claimed that the Act would increase costs for small business owners and decrease their competitive advantages during a time of high unemployment and economic uncertainty. Ultimately City Council Speaker Christine Quinn helped bring the

measure to vote through a compromise reached in early May with workers, unions, and community groups.

Note, however, that the law will only become effective if the New York City Coincident Economic Index ("CCEI"), which tracks economic activity in New York City, remains at or above its January 2012 level by the end of 2013.

Although Mayor Bloomberg has publicly stated that he will veto the Act, the 45-3 vote provides more than the two-thirds majority necessary to override a mayoral veto.