



NYC Responds to Employer Confusion Over State's Paid Prenatal Leave Requirements: 3 Key Points on City's New Rules Kicking in July 2

Insights

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New York City employers must take note of recent changes to the Earned Safe and Sick Time Act (ESSTA) that are about to take effect. The new ESSTA rules provide important clarity on the statewide paid prenatal leave requirements that took effect earlier this year and can help you properly integrate prenatal leave into your policies and practices. This insight provides three key points on the city's latest ESSTA updates to help you comply.

Quick Background

- Both New York State and New York City require employers to provide employees with 40 or 56 hours of paid sick leave, depending on the employer's size. NYC's requirements are provided in ESSTA which is enforced by the city's Department of Consumer and Worker Protection (DCWP). The DCWP's Office of Labor Policy and Standards (OLPS) provides additional rules regarding earned safe and sick time.
- Last year, New York State amended its paid sick leave law to mandate that employers additionally offer workers 20 hours of paid prenatal personal leave each year. As a result, covered employers across the state (including those in New York City) have been required to provide paid prenatal leave since January 1.

The Latest ESSTA Changes + 3 Key Points for NYC Employers

NYC's DCWP recently amended ESSTA and OLPS rules to incorporate the state's prenatal leave requirements that rolled out at the beginning of the year and clarify several items that had caused confusion among some employers. Below are three key points on the updated rules, which take effect July 2.

1. Employee Disclosure Requirements

NYC employers must inform employees of the amount of paid prenatal leave used and the remaining balance. Specifically, "for each pay period that an employee uses paid prenatal leave, the employer must 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." The DCWP's recent amendments make clear that **this information may be provided either on the pay statement or other form of**

make clear that this information may be provided either on the pay statement (or other form of written documentation provided to the employee each pay period) *or* in separate written documentation.

Note: NYC's prenatal leave disclosure rules extend beyond what's required by New York State, which only recommends maintaining clear records as a best practice.

2. Minimum Increment for Prenatal Leave Use and Schedule Changes

NYC rules permit employers to set minimum increments for the use of safe/sick time, so long as those increments do not exceed four hours. The DCWP's latest update clarifies that **minimum increments for paid prenatal leave may not exceed one hour per day** (New York State law likewise permits paid prenatal leave to be taken in one-hour increments).

Additionally, **NYC permits schedule changes in lieu of using paid prenatal leave upon the mutual consent of the employer and employee**. Employers cannot, however, require employees to work extra hours or find replacements as a condition for taking paid prenatal leave.

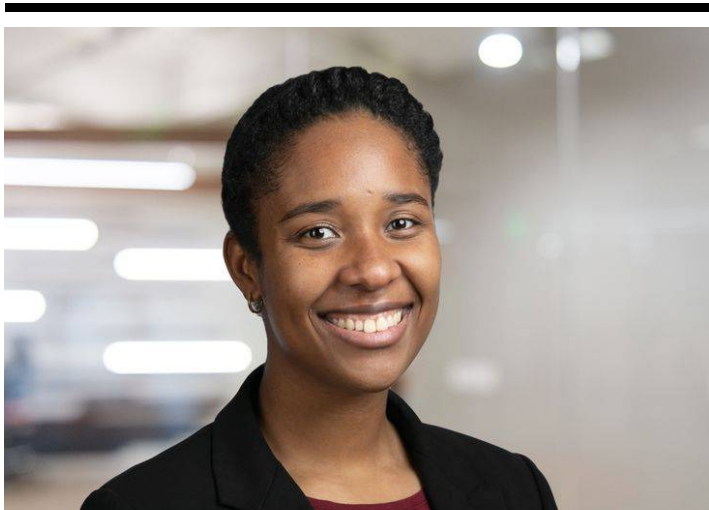
3. Penalties for Violations of the Paid Prenatal Leave Requirements

DCWP can impose penalties starting at **\$500 per violation**, and restitution may include back pay, reinstatement, front pay, and other appropriate relief for retaliation.

Conclusion

Make sure your policies and practices have been updated to reflect these latest changes. We will continue to monitor developments on employee leave issues, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our [Employee Leaves and Accommodations Practice Group](#), or any attorney in our [New York City office](#).

Related People





Amanda M. Blair

Associate

212.899.9989

Email



Brian J. Gershengorn

Co-Regional Managing Partner

212.899.9979

Email

Service Focus

Employee Leaves and Accommodations

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