

Insights, News & Events

# NYC EMPLOYERS ON ALERT: 7 ACTIONS TO TAKE NOW AS PROTECTED TIME OFF ENFORCEMENT RAMPS UP

Insights  
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## NYC Employers on Alert: 7 Actions to Take Now as Protected Time Off Enforcement Ramps Up

Significant changes to New York City's sick and safe leave law just took effect on February 22 requiring employers to provide 32 hours of unpaid time off and expanding the permissible uses for such leave. In response, city officials released updated FAQs and official notices to guide employer compliance. At the same time, Mayor Mamdani announced a renewed commitment to robust enforcement of these requirements across the city. Given these developments, it is critical that NYC employers immediately review policies and practices to ensure full compliance with the expanded leave law. Here are the key takeaways and seven actions you should consider taking right away.

### What Changed?

Amendments to the New York City Earned Safe and Sick Time Act (ESSTA) took effect on February 22, expanding employee time off rights. More information about the amendments is available in our [prior insight here](#). In summary, employees may now use safe/sick leave for additional reasons, including:

- Workplace, school or childcare provider closures due to a public disaster (fire, explosion, terrorist attack, severe weather conditions, or other declared public emergencies);

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- Compliance with public official directives to remain indoors or avoid travel due to a public disaster;
- Seeking legal or social services or taking other safety measures if the employee or their family member is a victim of workplace violence;
- Providing care to a minor child or care recipient; or
- Attending or preparing for legal proceedings related to subsistence benefits or housing – or taking actions necessary to apply for, maintain, or restore such benefits.

Employers must now provide a separate bank of at least 32 hours of unpaid leave, available immediately upon hire and replenished at the start of each calendar year. Employees may use this leave immediately for any reason permitted under the ESSTA.

The amendments also codified requirements for paid prenatal leave [previously introduced through rule changes](#). Additionally, most employer obligations under the city's Temporary Schedule Change Act (TSCA) have been eliminated, as leave for "personal events" covered by TSCA is now addressed under the ESSTA.

### **Key Takeaways from Updated Guidance**

The Department of Consumer and Worker Protection (DCWP) has updated its compliance materials to reflect the ESSTA amendments, including a new Notice of Employee Rights, updated FAQs, and requirements for compliant policies. The DCWP has also published proposed amendments to the ESSTA rules, with a public hearing scheduled for March 2.

Some important changes and action items for employers to note include:

- With expanded leave uses, DCWP is shifting away from referring to the law as the ESSTA, instead calling it the "Protected Time Off Law" and the leave provided "Protected Time Off."
- Employers must post the updated [Notice of Rights](#) and provide it to existing employees in English and any language spoken as a primary language by at least 5% of the workforce (if a DCWP translation is available). The notice must also be given to new hires.

- As of February 22, employers must provide employees with 32 hours of unpaid protected time off, available immediately. New hires must also receive 32 hours of immediately available protected time off. This bank replenishes at the start of each calendar year, but unused unpaid time off does not carry over.
- The 32-hour bank of unpaid protected time off cannot be prorated for part-time employees or those hired mid-year.
- Employers must have written protected time off policies that specifically explain the 32 hours of unpaid leave and the separate bank of 20 hours of paid prenatal leave, among other requirements. Updated policies must be distributed to employees within 14 days of any changes.
- Employers who provide more than the minimum required amount of paid protected time off may not need to provide the additional unpaid leave bank, provided at least 32 hours of paid time off is immediately available on the first day of employment and replenished at the start of each year.
- Paid prenatal leave must be provided as a separate bank and cannot be satisfied by more generous sick leave or PTO policies.
- When both paid and unpaid protected time off are available, employers should apply paid time off to absences unless the employee requests unpaid time.
- Paystubs must separately indicate the amount of paid and unpaid protected time off accrued, used, and available, as well as prenatal leave usage and balance.
- If a former employee is rehired within six months, their previous unpaid protected time off balance must be reinstated along with their paid leave balance.

## **Expanded Citywide Enforcement Measures**

Mayor Mamdani has announced new enforcement measures to ensure workers can use the leave guaranteed by NYC law. The city has preemptively sent compliance warnings to 56,000 businesses, including all city restaurants, prior enforcement targets, and DCWP licensees.

Additionally, DCWP released a new report outlining a data-driven enforcement strategy. The report found that the need

to use sick leave is universal across industries and demographics. If employer records show unusually low use rates, DCWP will treat this as strong evidence that protected time off is being restricted and may pursue enforcement on behalf of all affected employees.

Common violations leading to low use rates include:

- failing to offer protected time off;
- insufficient written policies;
- unlawful restrictions on use; or
- absence control policies that discipline workers for last-minute callouts.

Employers that fail to offer compliant protected time off face potential damages of \$500 per year for each affected employee, plus an equal amount in civil penalties. Subsequent violations may increase penalties to \$1,000 per employee per year.

## 7 Immediate Action Items

In light of the recent amendments and the city's heightened enforcement focus, New York City employers should consider taking immediate steps to ensure compliance with the expanded sick and safe leave requirements:

1. **Update your policy to comply with the amended law.**  
This is also an opportunity to review your policy for overall compliance with city law.
2. **Provide the updated policy to employees within 14 days of revising.** There are many requirements for a compliant policy, and you may want to seek assistance from legal counsel.
3. **Distribute the updated Notice of Rights** to current employees and post it in the workplace.
4. **Update onboarding materials** for new hires to include the updated Notice of Rights.
5. **Ensure paystubs include all required data** regarding accrual, use, and availability of paid and unpaid protected time off and prenatal leave.

6. **Train HR staff and managers** on the expanded leave requirements.
7. **Regularly audit leave practices** to ensure employees are not unlawfully denied protected time off or otherwise face barriers to use.

## **Conclusion**

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 author of this Insight, any attorney in our [Employee Leaves and Accommodations Practice Group](#), or any attorney in our [New York City office](#).