



Westchester County Mandates Employee Sick Leave

Insights

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Westchester County has just enacted an Earned Sick Leave Law which will soon require Westchester employers to provide sick leave to its employees. All Westchester employees—both full-time and part-time—who work more than 80 hours per year are eligible to earn sick time. The law, which was passed on October 1, will take effect 180 days from its adoption: March 30, 2019. What do employers need to know about this new law?

Westchester County Joins The Ranks Of Others In New York

The new Westchester law is very similar to New York City's sick time law (although without New York City's latest expansion to cover time off for "safe leave"), and the Westchester legislature relied on the supposed benefits of New York City's law and similar laws in other jurisdictions in passing the new Westchester law. Coming on the heels of [Westchester County banning employers from asking applicants about their salary history](#), the new law continues a trend of Westchester County emulating employee-friendly New York City laws and expanding employee protections and mandatory benefits just a few exits up the Bronx River Parkway.

Indeed, Westchester County, [New York City](#), and [New York State](#) appear to be in a race to pass as many employee-friendly laws as quickly as possible, and, so far, all three appear to be tied for the lead ([with Albany County not far behind](#)).

Basic Overview Of Westchester Law

Much like the New York City law, the Westchester law requires employers to provide 40 hours of sick leave per year to eligible employees, although nothing prohibits employers from providing more. For employers with five or more employees, the earned sick time must be paid at the "rate the employee normally earns during hours worked," while for employers with less than five employees, the earned sick time can be unpaid.

Employees accrue one hour of sick time for every 30 hours worked for the employer. Earned, but unused, sick time can be carried over to the following year; however, the law only mandates that an employer provide 40 hours of sick time per year, and there is no requirement that earned, but unused, sick time be paid out to the employee when their employment terminates.

Earned sick time can be used by the employee for the following reasons:

- For an employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of such illness, injury, or health condition; or an employee's need for preventative medical care.
- The care of a family member (broadly defined under the law) for a mental or physical illness, injury, or health condition; for the family member's need for medical diagnosis, care, or treatment of such illness, injury, or health condition; or for the family member's preventative medical care.
- Certain situations where the public health authorities have either determined that an employee or family member's presence in the community may jeopardize the health of others or have closed the employer's place of business.

Similar to New York City's law, the Westchester law allows for employers to satisfy the requirements of the law by providing 40 hours of combined sick and personal time. However, the employer must allow the employee to take the time as needed for sick time with no advance notice necessary and no additional restrictions. In addition, the law does not apply to employees covered by a collective bargaining agreement (CBA) if the provisions of the law are expressly waived in the CBA and the CBA provides for comparable benefits, such as vacation time, personal time, sick time, or premium pay for holidays or weekend work.

The law will be enforced by the Department of Weights and Measures – Consumer Protection. However, unlike the New York City law, employees have a private right of action to bring a lawsuit against their employer. Complaints with the Department or civil actions must be made within one year of the alleged violation.

In either scenario, employees may recover the greater of \$250 or three times the wages that should have been paid for each instance of undercompensated sick time taken. Employees can also recover \$500 for each instance where employees have been unlawfully denied requested sick time. In situations where an employer has taken adverse action against an employee for asserting their rights under the law, employees can receive the usual remedies, such as reinstatement and back pay. For all types of violations, employees can also recover reasonable attorneys' fees, the costs of an administrative hearing, and other appropriate monetary or equitable relief.

Looking Ahead: What Should You Do?

The effective date of the law will be here before you know it, so Westchester employers should review their paid time off policies to ensure that they are compliant with the new law. Many Westchester employers may already provide greater than 40 hours of paid time off, but it is still important for employers to ensure they understand the nuances of the law and ensure their policies are tailored to the law's requirements.

For more information about compliance with the new law, contact any attorney in our [New York City](#) office at 212.899.9960 or your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific county law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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