

Alert

New York State Minimum Wage Increases and New York City's Paid Sick Days Requirements

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Two recently passed laws will soon impact New York State and New York City employers. The first law involves an increase in New York State's minimum wage over a two-year period beginning Dec. 31, 2013. The second law is the Earned Sick Time Act, which was recently passed by the New York City Council and will require most New York City employers to provide leave time beginning, at the earliest, on April 1, 2014.

Minimum Wage Increases

On March 29, 2013, Governor Andrew Cuomo signed legislation increasing the state's minimum wage. The legislation, passed as part of the legislation implementing the New York State 2013-2014 budget, will increase the minimum wage in steps from the current \$7.25 per hour. The minimum wage will increase to \$8.00 per hour effective Dec. 31, 2013, to \$8.75 per hour effective Dec. 31, 2014, and to \$9.00 per hour effective Dec. 31, 2015. The minimum wage for tipped workers will remain \$7.25 per hour, and the tip credit for those workers remains the same under the new legislation. The legislation, however, authorizes the creation of a wage board to consider increases for tipped workers. We expect the New York State Department of Labor to update its regulations to bring the salary level needed for the exemptions from overtime pay regulations into conformity with the new minimum wage increases.

New York City's Paid Sick Time Law

On May 8, 2013, the New York City Council passed, by a 45–3 vote, the Earned Sick Time Act, which will require most New York City employers to provide paid sick time to their employees. While not yet signed into law, the vote is enough to override a veto by Mayor Michael Bloomberg.

Due to concerns about the law's economic impact during the current economic climate, there is an elaborate system to determine when it will be effective. If the New York City Independent Budget Office ("IBO") determines that the New York City Coincident Economic Index (the "Index") is at or above its January 2012 level on Dec. 16, 2013, then, on April 1, 2014, all New York City employers with 20 or more employees will be required to begin providing paid sick leave and all other employers covered under the law must begin providing unpaid sick leave at that time. On Oct. 1, 2015, all employers with 15–19 employees, or who employ a domestic worker, will be required to begin providing paid sick time. The law's implementation will be delayed until a later date if the IBO determines on Dec. 16, 2013 that the Index is below its January 2012 level.

Under the law, all employers will be required to provide their employees with one hour of sick time for every 30 hours they work, up to a maximum of 40 hours of sick time during the employer's calendar year. The larger employers referenced above will eventually be required to provide their employees with paid sick time, and all other employers will be required to provide their employees with unpaid sick time. Domestic workers will be entitled to two days of paid sick time in addition to any paid days of rest the domestic worker is already

entitled under any applicable law. Employers will not be required to provide sick time to hourly professional employees.¹

An employee may use sick time for:

- (a) The employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;
- (b) Care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventative medical care; or
- (c) Closure of the employee's place of business by order of a public official due to a public health emergency or the employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.

Employers who already provide their employees with leave sufficient to meet the law's requirements, whether vacation, personal or any other type of leave, and allow such leave to be used for the same purposes as required under the law, will be in compliance with the law and not required to provide any additional leave time.

If an employee is absent for more than three consecutive days, the employer may require reasonable documentation that the use of sick time was for an approved purpose. Additionally, an employer may require an employee to provide notice, when practicable, of the employee's intention to use sick time.

Except for domestic workers, unused sick time in one calendar year shall be carried over to the following year, unless the employee is paid for the unused paid sick time at the end of the calendar year in which it accrues and the employer provides the employee with an amount of paid sick time that meets or exceeds the law's requirements on the first day of the next calendar year. In no event, however, is the employer required to allow the use of more than 40 hours of sick time in a calendar year. The law does not require that an employer pay an employee for unused sick leave upon the employee's separation from employment.

The legislation does not apply to any employee covered by a collective bargaining agreement if the agreement: (a) expressly waives the provisions of the law; and (b) the agreement provides a comparable benefit for employees. Additionally, the law does not apply to employees in the construction or grocery industries who are covered by a collective bargaining agreement if the agreement expressly waives the provisions of the law, regardless of whether there are comparable benefits.

Employers must notify their employees of their right to sick time at the commencement of their employment. The New York City Department of Consumer Affairs is required to create and make available downloadable notices that contain the required information and allow the employer to fill in the applicable dates for each employer's calendar year. Violations of the law will be enforced by the Department of Consumer Affairs.

We recommend that employers review their current leave time policies to ensure they are in compliance the new law. Employers should pay close attention to their carry over and accrual policies to ensure they meet all of the law's requirements.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

¹ An hourly professional employee is defined as "any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York State Board of Regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year."

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