

NYC Gives Employees a Private Right of Action for Violations of Earned Safe and Sick Leave

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The pace of earned safe and sick leave (ESSL) legislation at the New York State and City levels has been breathtaking. In the latest development, the City has amended New York City law to provide employees with a private right of action against employers for alleged violations of the City's ESSL law.

What is ESSL?

Put simply, ESSL requires employers to provide employees with paid leave for "safe" and "sick" time. Employers with 100 or more employees must provide up to 56 hours of paid leave each calendar year. Employers with 5 to 99 employees, and some employers with 4 or fewer employees, must provide up to 40 hours of paid leave each calendar year.

"Safe" leave is an absence from work when an employee or a member of the employee's family has been the victim of domestic violence, a family offense, sexual offense, stalking, or human trafficking and the absence is due to any of the following as it relates to the domestic violence, family offense, sexual offense, stalking, or human trafficking:

- to obtain services from a domestic violence shelter, rape crisis center, or other services program;
- to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;
- to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in, any criminal or civil proceeding;
- to file a complaint or domestic incident report with law enforcement;
- to meet with a district attorney's office;
- to enroll children in a new school; or
- to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

See N.Y. Lab. Law § 196-B; N.Y.C. Admin. Code §§ 20-913, 914.

"Sick" leave is time off work for health reasons. Covered employees can use sick leave for the care and treatment of themselves or a family member. A family member includes a child, spouse, domestic partner, parent, child or parent of an employee's spouse or domestic partner,

sibling (half, adopted, or step sibling), any other individual related by blood to the employee or any other individual whose close association with the employee is the equivalent of a family relationship. See N.Y. Lab. Law. § 196-B; N.Y.C. Admin. Code §§ 20-912, 914.

What is a Private Right of Action?

There are some New York employment laws that are enforced solely by government regulators; others permit employees to enforce their own rights, for example by suing in a court and/or commencing a proceeding before an administrative agency. A private right of action is the right to commence such a lawsuit or administrative proceeding.

The New York State ESSL does not provide for a private right of action and, until recently, neither did the City law. That has now changed. On January 20, 2024 the City Council enacted an amendment to the City's earned safe and sick time act that takes effect March 20, 2024. See [N.Y.C. Admin. Code § 20-924 \(eff. March 20, 2024\)](#).

Some of the specifics are as follows. A claim must be asserted with either a court or the New York City Department of Consumer and Worker Protection (DCWP) within two years "of the date the person knew or should have known of the alleged violation." If a claim is asserted in court, DCWP will "stay" (put on hold) its investigation until it is "notified such civil action is withdrawn or dismissed without prejudice." If the civil action proceeds to a final judgment or settlement, DCWP "shall dismiss the complaint unless [it] determines the complaint alleges a violation not resolved by such judgment or settlement." N.Y.C. Admin. Code § 20-924. In short, a person may bring any particular claim in court or before the DCWP, but may only pursue any particular claim in one forum, not both.

If DCWP finds a violation, it may provide "all appropriate relief." This includes treble damages or \$250 per violation, whichever is greater, "for each instance of safe/sick time taken by an employee but unlawfully not compensated by the employer"; \$500 for each instance "an employer requires an employee to work additional hours without the mutual consent of such employer and employee... to make up for the original hours during which such employee is absent"; if the employee is not discharged from employment, then "full compensation including wages and benefits lost, \$500, and equitable relief as appropriate"; if the employee is discharged from employment, then "full compensation including wages and benefits lost, \$2,500, and equitable relief, including reinstatement, as appropriate"; and \$500 for each employee covered by the employer's "official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time." The employer is also subject to an escalating series of fines.

If an employee brings an action against the employer in court, the new legislation provides that the employee may recover any of the same remedies they could recover from the DCWP as well as injunctive and declaratory relief, attorney's fees and costs, and other relief the court may deem appropriate. See N.Y.C. Admin. Code § 20-924.

Recommendations for Employers

Employers should review their ESSL policies for compliance with legal obligations.

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