New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to add rules related to the Earned Safe and Sick Time Act ("ESSTA"), which was established by Chapter 8 of Title 20 of the New York City Administrative Code.

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Chapter 8 of Title 20 of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on January 15, 2025. A public hearing was held on February 14, 2025, and comments regarding the rule were received.

Statement of Basis and Purpose of Rule

The Department of Consumer and Worker Protection ("DCWP" or "Department") is amending rules related to the Earned Safe and Sick Time Act ("ESSTA"), which was established by Chapter 8 of Title 20 of the New York City Administrative Code.

With limited exceptions, ESSTA requires employers to provide each employee up to 40 or 56 hours of accrued safe/sick time each calendar year. ESSTA defines "safe/sick time" as time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of the New York City Administrative Code, whether or not compensation for that time is required pursuant to Chapter 8 of Title 20 of the New York City Administrative Code. Section 20-914 provides that an employee is entitled to use safe/sick time for an absence from work due to, among other things, an employee's need for preventive medical care or for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition. Section 196-b of the Labor Law similarly requires that employers provide each employee in each calendar year up to 40 or 56 hours of "sick leave," which employees may use for, among other things, preventive care or the diagnosis, care, or treatment of their mental or physical illness, injury or health condition.

Section 196-b of the Labor Law was amended in 2024 to require, on and after January 1, 2025, that every employer provide its employees twenty hours of paid prenatal personal leave during any fifty-two-week calendar period. Paid prenatal personal leave is defined as leave taken for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy (hereinafter "paid prenatal personal leave" or "paid prenatal leave"). This paid prenatal leave requirement is in addition to the accrued sick leave every employer must provide to its employees each calendar year. Accordingly, section 196-b of the Labor Law now requires employers to provide employees up to 40 or 56 hours of accrued sick leave and an additional 20 hours of paid prenatal leave, all of which is time an employee can use for health care services during or related to their pregnancy.

Subdivision (c) of section 20-923 of Chapter 8 of Title 20 of the New York City Administrative Code provides that, where section 196-b of the Labor Law sets forth a standard or requirement for minimum hour or use of safe/sick time that exceeds any provision in ESSTA, such standard or requirement must be incorporated by reference. The incorporated standard or requirement is enforceable by DCWP in the manner set forth in ESSTA and subject to the penalties and remedies set forth in the Labor Law. Further, section 196-b(12) of the Labor Law provides that the City of New York is not prevented from enacting and enforcing local laws or ordinances which meet or exceed any standard or requirements for minimum hour and use set forth in section 196-b of the Labor Law.

These rule amendments incorporate into ESSTA by reference the paid prenatal leave requirements set forth in section 196-b of the Labor Law, as mandated by subdivision (c) of section 20-923 of the New York City Administrative Code. In addition to referring to the relevant provisions of section 196(b), the rule amendments make explicit that employers must provide a benefit of 20 hours of paid prenatal leave during any fifty-two-week calendar period in addition to the up to 40 or 56 hours of safe/sick time employers must provide each calendar year. The rule amendments also clarify the penalties and remedies that DCWP may order for violations of the paid prenatal leave requirements, providing clear notice of the potential penalties and remedies for non-compliance. The rule amendments integrate the additional paid prenatal leave requirements into the current compliance framework for accrued safe/sick time and clarify for employers what their compliance obligations are under ESSTA.

The clarifications set forth in these rule amendments are necessary, including to make employees aware of their right to paid prenatal leave, ensure employees know how to exercise their paid prenatal leave right, enable employees to determine how much accrued safe/sick time they need to use pursuant to subdivision (g) of section 20-913 of the New York City Administrative Code, and to provide employers clear guidance on how to lawfully integrate paid prenatal leave into their existing safe/sick time policies and practices. Further, clarity on potential awards of civil penalties and worker restitution provides employers notice of potential liabilities and ensures that adjudicators order awards that are consistent and fair.

In response to its Notice of Proposed Rulemaking, the Department received and considered all comments on the proposed rules. Comments were received at the public hearing and in writing, including from worker advocacy organizations, legal services providers, an employment lawyer association, and members of the public. These comments included suggestions for adding language related to the meaning of "paid prenatal leave" and operational aspects of administering this leave. Additional comments supported the rules, while others raised questions about the Department's authority to promulgate these rules and whether the rules align with state law. In making changes to the proposed rules, the Department focused on comments that raised potential points of employer confusion. Specifically, the Department changed sections 7-204 and 7-207 as follows:

- Removing a reference to "paid prenatal leave" in subdivision b of section 7-204 to clarify that paid prenatal leave is not subject to the provisions of the rule regarding fixed periods for the use of accrued safe/sick time;

- Adding and removing language in subdivisions a and b of 7-207 to clarify that employers may make the required disclosures about paid prenatal leave in documentation that is separate from the pay statement or other form of written documentation required by section 20-919(c).

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and Chapter 8 of Title 20 of the New York City Administrative Code authorize DCWP to adopt these rule amendments.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 7-201 of subchapter B of chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new subdivision (c), to read as follows:

(c) As used in this subchapter, the term "paid prenatal leave" has the same meaning as "paid prenatal personal leave" as set forth in subdivision 4-a of section 196-b of the labor law.

§ 2. Sections 7-204 through 7-209 and 7-211 of subchapter B of chapter 7 of Title 6 of the Rules of the City of New York are amended to read as follows:

§ 7-204 Minimum Increments and Fixed Intervals for the Use of Safe/Sick Time and Paid Prenatal Leave.

(a) Unless otherwise in conflict with state or federal law or regulations, an employee may decide how much safe/sick time or paid prenatal leave to use, provided however, that an employer may adopt a written policy, as set forth in [6 RCNY §] section 7-211, setting a minimum increment for the use of safe/sick time not to exceed four hours per day, or one hour per day for the use of paid prenatal leave as provided in labor law section 196-b(4-a), provided such minimum increment is reasonable under the circumstances.

Example 1: An employer has a written policy setting a minimum increment of four hours per day for use of safe/sick time. The employee has not yet accrued four hours of time, but is entitled to use the time he or she has already accrued. Under these circumstances, it would not be "reasonable under the circumstances" for the employer to require the employee to use a minimum of four hours of safe/sick time as the minimum increment.

Example 2: An employee is scheduled to work from 8:00 a.m. to 4:00 p.m. Mondays. She schedules a doctor's appointment for 9:00 a.m. on a Monday and notifies her employer of her intent to use sick time and return to work the same day. The employer's written sick time policies require a four-hour minimum increment of sick time used per day. If she does not go to work before her appointment, she should appear for work by 12:00 p.m.

(b) An employer may set fixed periods of 30 minutes or any smaller amount of time for the use of accrued safe/sick time beyond the minimum increment described in subdivision (a) of this section and may require fixed start times for such intervals.

Example: The employee in Example 2 of subdivision (a) of this section arrives to work at 12:17 p.m. Under her employer's written sick time policies, employees must use sick time in half-hour intervals that start on the hour or half-hour. The employer can require the employee to use four-and-a-half hours of her accrued sick time and require her to begin work at 12:30 p.m. Similarly, if the employee wanted to leave work at 8:40 a.m. to go to her 9:00 a.m. doctor's appointment, the employer could require the employee to stop work at 8:30 a.m.

§ 7-205 Employee Notification of Use of Safe/Sick Time and Paid Prenatal Leave.

(a) An employer may require an employee to provide reasonable notice of the need to use safe/sick time or paid prenatal leave, provided the requirement to provide notice and the method of providing notice are set forth in the written policy required by section 7-211.

(b) An employer that requires notice of the need to use safe/sick time or paid prenatal leave where the need is not foreseeable shall provide a written policy that contains reasonable procedures for the employee to provide notice as soon as practicable. Examples of such procedures may include, but are not limited to, instructing the employee to: (1) call a designated phone number at which an employee can leave a message; (2) follow a uniform call-in procedure; (3) send an email to a designated email address; (4) submit a leave request in a scheduling software system, provided the employee has access to such system on non-work time, and has been trained on and given written instructions on how to use the system; or (5) use another reasonable and accessible means of communication identified by the employer. Such procedures for employees to give notice of the need to use safe/sick time or paid prenatal leave when the need is not foreseeable may not include any requirement that an employee appear in person at a worksite or deliver any document to the employer prior to using safe/sick time or paid prenatal leave.

(c) In determining when notice is practicable in a given situation, an employer must consider the individual facts and circumstances of the situation.

(d) An employer that requires notice of the need to use safe/sick time or paid prenatal leave where the need is foreseeable shall have a written policy that contains procedures for the employee to provide reasonable notice, which may include any of the reasonable procedures set forth in [6 RCNY §] section 7-205(b). Such policy shall not require more than seven days' notice prior to the date such safe/sick time is to begin. The employer may require that such notice be in writing.

(e) A need is foreseeable when the employee is aware of the need to use safe/sick time or paid prenatal leave seven days or more before such use. Otherwise, the need is unforeseeable.

§ 7-206 Documentation of Authorized Use of Safe/Sick Time and Paid Prenatal Leave.

(a) When an employee's use of safe/sick time or paid prenatal leave results in an absence of more than three consecutive work days, an employer may require reasonable written documentation that the use was for a purpose authorized under section 20-914(a) or (b) of the Administrative Code or labor law section 196-b(4-a), respectively. For a use of sick time or paid prenatal leave, written documentation signed by a licensed clinical social worker, licensed mental health counselor, or other licensed health care provider indicating the need for the amount of sick time or paid prenatal leave, respectively, taken shall be considered reasonable documentation. For a use of safe time, any documentation set forth in section 20-914(b)(2) indicating the need for the amount of safe time taken shall be considered reasonable documentation. Consistent with the requirements in sections 20-914 and 20-921 of the Administrative Code and section 196-b(5)(a) of the labor law, an employer cannot require disclosure of details, except the dates the employee needed to use safe/sick time or paid prenatal leave.

(b) "Work days" as used in this section and in section 20-914 of the Administrative Code means the days or shifts the employee would have worked had the employee not used safe/sick time or paid prenatal leave.

(c) If an employer requires an employee to provide reasonable written documentation in accordance with subdivision (a) of this section, the employee shall be allowed a minimum of seven days from the date he or she returns to work to obtain such documentation. Unless otherwise required by law, an employer must not require an employee to submit such documentation before returning to work. If an employer requests or requires documentation for sick time or paid prenatal leave and the licensed health care provider charges the employee a fee for the provision of such documentation, such employer shall reimburse the employee for such fee. If an employer requests or requires documentation for safe time, such employer shall reimburse an employee for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for the employer.

(d) If an employee provides reasonable written documentation in accordance with subdivision (a) of this section, an employer may not require an employee to obtain additional documentation indicating the need for safe/sick time or paid prenatal leave in the amount used by the employee.

(e) An employer that requires employees to provide reasonable written documentation for uses of safe/sick time or paid prenatal leave in accordance with subdivision (a) of this section must set forth this requirement, along with the types of reasonable written documentation the employer will accept and instructions on how employees can submit the documentation to the employer, in the written safe/sick time policy required by section 7-211.

(f) An employer shall not require documentation that the use of safe/sick time or paid prenatal leave was for a purpose authorized under section 20-914 of the Administrative Code or labor law section 196-b(4-a) if the use of such safe/sick time or paid prenatal leave lasts three or fewer consecutive work days.

§ 7-207 Notice of Safe/Sick Time Accruals and Use of Safe/Sick Time and Paid Prenatal Leave on Pay Statement.

(a) The pay statement or other form of written documentation required by section 20-919(c) of the Administrative Code must inform the employee of the amount of safe/sick time accrued and used during the relevant pay period. It must also inform the employee of the total balance of the employee's accrued safe/sick time available for use. As set forth in [6 RCNY §] section 7-214(f), an employee's accrued safe/sick time balance may exceed the amount of safe/sick time the employee has available for use in a calendar year. When this occurs, the pay statement or other form of written documentation must inform the employee of the amount of safe/sick time available for use in the calendar year. 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, either on the pay statement or other form of written documentation required by section 20-919(c) or in separate written documentation.

(b) If an employer uses an electronic system to issue pay statements or other documentation related to safe/sick time or paid prenatal leave, the employer may comply with the requirements of section 20-919(c) of the Administrative Code and subdivision a of this section by (i) electronically alerting the employee each pay period to the availability of the required information; (ii) making the content required by section 7-212(b)(4) readily accessible by the employee outside of the workplace within the electronic system; and (iii) maintaining accrual, use, and balance information for any past pay period in the electronic system such that it is readily accessible to the employee outside of the workplace.

§ 7-208 Rate of Pay for [Safe Time and Sick] Safe/Sick Time and Paid Prenatal Leave.

(a) An employer shall pay an employee for paid safe/sick time or paid prenatal leave at the employee's regular rate of pay at the time the paid safe/sick time or paid prenatal leave is taken, provided that the rate of pay shall not be less than the highest applicable rate of pay to which the employee would be entitled pursuant to section 652 of the New York State Labor Law, or any other applicable federal, state, or local law, rule, contract, or agreement.

(b) If the employee uses paid safe/sick time or paid prenatal leave during hours that would have been designated as overtime, the employer is not required to pay the overtime rate of pay. The employer may only deduct the number of hours of safe/sick time or paid prenatal leave actually used by the employee from the employee’s safe/sick time accruals or bank of paid prenatal leave, respectively, regardless of whether those hours would have been classified as straight-time or overtime hours.

(c) An employee is not entitled to compensation for lost tips or gratuities, provided, however, that an employer must pay an employee whose regular rate of pay is based in whole or in part on tips or gratuities at least the highest applicable rate of pay to which the employee would be entitled pursuant to section 652 of the New York State Labor Law, or any other applicable federal, state, or local law, rule, contract, or agreement, without allowing for any tip credit or tip allowance, as provided in section 20-913(a)(1) of the Administrative Code.

(d) Unless a higher applicable rate applies pursuant to any other law, rule, regulation, contract, or agreement, when employees are paid on a commission (whether base wage plus

commission or commission only), the hourly rate of pay shall be the base wage or minimum wage, whichever is greater.

(e) Unless a higher applicable rate applies pursuant to any other law, rule, regulation, contract, or agreement, when an employer pays a flat rate of pay for work performed, regardless of the number of hours actually worked, an employee's hourly rate of pay shall be based on the most recent hourly rate paid to the employee for the applicable pay period, calculated by adding together the employee's total earnings, including tips, commissions, and supplements, for the most recent work week in which no safe/sick time or other leave was taken and dividing that sum by the number of hours spent performing work during such work week or 40 hours, whichever amount of hours is less.

(f) Unless a higher applicable rate applies pursuant to any other law, rule, regulation, contract, or agreement, if an employee performs more than one job for the same employer or the employee's rate of pay fluctuates for a single job, the rate of pay shall be the rate or rates of pay that the employee would have been paid during the time the employee used the [safe time or sick] safe/sick time or paid prenatal leave.

(g) The fact that an employer pays cash in lieu of supplements to an employee does not relieve the employer of the requirements of the Earned Safe and Sick Time Act.

(h) Under no circumstance can the employer pay the employee less than the minimum wage for paid safe/sick time or paid prenatal leave.

§ 7-209 Payment of Safe/Sick Time and Paid Prenatal Leave.

(a) Safe/sick time or paid prenatal leave must be paid no later than the payday for the next regular payroll period beginning after the safe/sick time or paid prenatal leave was used by the employee.

(b) If the employer requires reasonable written documentation in accordance with [6 RCNY §] section 7-206 or confirmation of use of safe/sick time or paid prenatal leave pursuant to section 20-914(d) of the Administrative Code or section 7-216, the employer is not required to pay safe/sick time or paid prenatal leave until the employee has provided such documentation or confirmation, except that an employer shall not withhold payment of safe/sick time or paid prenatal leave when the required documentation is unattainable by the employee due to associated costs.

(c) If an employer requests or requires documentation and the employee has provided to the employer such documentation and proof of the fee or reasonable costs incurred for the purpose of obtaining such documentation, the employer shall reimburse the employee for such fee or reasonable costs in accordance with subdivision (c) of [6 RCNY §] section 7-206 no later than the payday for the next regular payroll period beginning after the provision of such proof.

(d) An employer that withholds payment of safe/sick time or paid prenatal leave in accordance with subdivision (b) of this section must set forth this policy and instructions on how

employees can submit requests for reimbursement and proof of fees or costs to the employer in the written safe/sick time policy required by [6 RCNY §] section 7-211.

§ 7-211 Employer's Written [Safe Time and Sick] Safe/Sick Time and Paid Prenatal Leave Policies.

(a) Every employer shall maintain written safe/sick time and paid prenatal leave policies in a single writing and follow such written safe/sick time and paid prenatal leave policies except as allowed in subdivision (d) of this section.

(b) Every employer must distribute its written safe/sick time and paid prenatal leave policies to employees personally upon commencement of employment, within 14 days of the effective date of any changes to the policy, and upon request by the employee.

(c) An employer's written safe/sick time and paid prenatal leave policies must meet or exceed all of the requirements of the Earned Safe and Sick Time Act and this subchapter and must address the following:

(1) The employer's method of calculating safe/sick time as follows:

(i) If an employer provides employees with an amount of safe/sick time that meets or exceeds the requirements of the Earned Safe and Sick Time Act on the first day of employment and on the first day of each new calendar year, which for the purposes of this section is defined as "frontloaded safe/sick time", then the employer's written safe/sick time policy must specify the amount of frontloaded safe/sick time to be provided and that such frontloaded time is immediately available for use;

(ii) If the employer does not apply frontloaded safe/sick time, then the employer's written safe/sick time policy must specify that accrual of safe/sick time starts at commencement of employment, the rate at which an employee accrues safe/sick time and that an employee may use safe/sick time as it accrues;

(2) The availability of a separate bank of 20 hours of paid prenatal leave during any 52-week calendar period, in accordance with section 7-216.

(3) The employer's policies regarding the use of safe/sick time and paid prenatal leave, including any limitations or conditions the employer places on the use of safe/sick time or paid prenatal leave, such as:

(i) Any requirement that an employee provide notice of a need to use safe/sick time or paid prenatal leave and the procedures for doing so in accordance with [6 RCNY §] section 7-205;

(ii) Any requirement for reasonable written documentation or confirmation of the use of safe/sick time or paid prenatal leave in accordance with sections 20-914(a)(2), 20-914(b)(2), or 20-914(d) of the Administrative Code and [6 RCNY §] sections 7-206 and 7-216, and the employer's policy regarding any consequences of an employee's failure or delay in providing such documentation or confirmation;

(iii) Any reasonable minimum increment or fixed period for the use of accrued safe/sick time or paid prenatal leave as set forth in [6 RCNY §] section 7-204;

(iv) Any policy on discipline for employee misuse of safe/sick time or paid prenatal leave under [6 RCNY §] section 7-215; and

(v) A statement that the employer will not ask the employee to provide details about the medical condition that led the employee to use sick time or paid prenatal leave, or the personal situation that led the employee to use safe time, and that any information the employer receives about the employee's use of safe/sick time or paid prenatal leave will be kept confidential and not disclosed to anyone without the employee's written permission or as required by law.

[(3)] (4) The employer's policy regarding carry-over of unused safe/sick time at the end of an employer's calendar year in accordance with section 20-913(h) of the Administrative Code; and,

[(4)] (5) If an employer uses a term other than "safe/sick time" or "safe and sick time" to describe leave provided by the employer to meet the requirements of the Earned Safe and Sick Time Act and this subchapter, the employer's policy must state that such leave may be used by an employee for any of the purposes set forth in the Earned Safe and Sick Time Act and this subchapter without any condition prohibited by the Earned Safe and Sick Time Act or this subchapter. Terms used to describe such leave may include, but are not necessarily limited to, "paid time off" ("PTO"), vacation time, personal days, or days of rest.

(d) Nothing in this subchapter shall prevent an employer from making exceptions to its written safe/sick time [policy] and paid prenatal leave policies for individual employees that are more generous to the employee than the terms of the employer's written policy.

(e) Requirements relating to an employer's additional and separate obligation to provide employees with a Notice of Rights under the Earned Safe and Sick Time Act are set forth in section 20-919 of the Administrative Code and section 7-107 of subchapter A. An employer may not distribute the Notice of Rights required by section 20-919 of the Administrative Code or any other department writing in lieu of distributing its own written safe/sick time and paid prenatal leave policies as required by this section.

(f) An employer that has not provided to the employee a copy of its written safe/sick time and paid prenatal leave policies along with any forms or procedures required by the employer related to the use of safe/sick time or paid prenatal leave shall not deny permission to use safe/sick time or paid prenatal leave, payment of safe/sick time or paid prenatal leave, or take adverse actions as set forth in section 20-918 of the Administrative Code against the employee based on non-compliance with such a policy.

§ 3. Subdivision (b) of section 7-212 of Subchapter B of Chapter 7 of Title 6 of the Rules of the City of New York is amended to read as follows:

(b) An employer must maintain, in an accessible format, contemporaneous, true, and accurate records that show, for each employee:

(1) The employee's name, address, phone number, date(s) of start of employment, date(s) of end of employment (if any), rate of pay, and whether the employee is exempt from the overtime requirements of New York State labor laws and regulations;

(2) The hours worked each week by the employee, unless the employee is exempt from the overtime requirements of New York State labor laws and regulations and has a regular work week of 40 hours or more;

(3) The date and time of each instance of safe/sick time or paid prenatal leave used by the employee and the amount paid for each instance;

(4) For each pay period, the amount of safe/sick time accrued and used during the pay period, the employee's total balance of accrued safe/sick time, [and] the amount of accrued safe/sick time available for use by the employee, the amount of paid prenatal leave used during the pay period, and the employee's total balance of paid prenatal leave;

(5) Any change in the material terms of employment specific to the employee; and

(6) The date that the Notice of Rights as set forth in section 20-919 of the Administrative Code was provided to the employee and proof that the Notice of Rights was received by the employee.

§ 4. Section 7-213 of Subchapter B of Chapter 7 of Title 6 of the Rules of the City of New York is amended by adding new subdivisions (g), (h), and (i) to read as follows:

(g) Requirements relating to paid prenatal leave under this subchapter will be enforced in the manner set forth in subdivisions a, b, and c of section 20-924 of the Administrative Code.

(h) For a violation of one of the paid prenatal leave requirements under this subchapter, an employee or former employee shall be entitled to the relief set forth in sections 198, 215, 218, and 219 of the Labor Law, including but not limited to:

(1) the full amount of any underpayment of wages owed pursuant to this subchapter and interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment;

(2) liquidated damages up to one hundred percent of the total amount of wages found to be due, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law; and

(3) for prohibited retaliation, all appropriate relief, including injunctive relief, liquidated damages not more than twenty thousand dollars, rehiring or reinstatement to a former position or an equivalent position, and an award of lost compensation or an award of front pay in lieu of reinstatement and an award of lost compensation.

(i) For a violation of one of the paid prenatal leave requirements under this subchapter, an employer or person shall be liable for the penalties set forth in sections 197, 215, and 218 of the labor law, including but not limited to:

(1) for prohibited retaliation, a civil penalty of not less than one thousand nor more than ten thousand dollars; and
(2) for underpayment of wages, a civil penalty of five hundred dollars for each failure to pay wages owed.

§ 5. The section heading and subdivisions (d) and (e) of section 7-214 of subchapter B of chapter 7 of Title 6 of the Rules of the City of New York are amended to read as follows:

§ 7-214 Accrual, Hours Worked, Hours Used and Carry Over.

(d) Per diem employees may use safe/sick time or paid prenatal leave for hours they were scheduled to work or for hours they would have worked absent a need to use safe/sick time or paid prenatal leave. For per diem employees or employees with indeterminate shift lengths (e.g., a shift whose length is defined by business needs), an employer shall base the hours of safe/sick time or paid prenatal leave used upon the hours worked by the replacement employee for the same shift. If this method is not possible, the hours of safe/sick time or paid prenatal leave must be based on the hours worked by the employee when the employee most recently worked the same shift in the past.

(e) An employer shall base the amount of safe/sick time or paid prenatal leave used upon the amount of time the employee would have worked on the day they were absent for a covered reason.

§ 6. Section 7-215 of subchapter B of chapter 7 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 7-215 Employee Abuse of [Safe Time and Sick] Safe/Sick Time or Paid Prenatal Leave.

(a) An employer may take disciplinary action, up to and including termination, against an employee who:

(1) uses safe/sick time provided under the Earned Safe and Sick Time Act for purposes other than those described in [§]sections 20-914(a) and 20-914(b) of the Administrative Code; or

(2) uses paid prenatal leave provided under section 7-216 for purposes other than those described in section 196-b(4-a) of the labor law.

(b) Indications of abuse of safe/sick time or paid prenatal leave may include, but are not limited to a pattern of: (1) use of unscheduled safe/sick time or paid prenatal leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation or pay day, (2) taking scheduled safe/sick time or paid prenatal leave on days when other leave has been denied, and (3) taking safe/sick time or paid prenatal leave on days when the employee is scheduled to work a shift or perform duties perceived as undesirable.

§ 7. Subchapter B of chapter 7 of Title 6 of the Rules of the City of New York is amended by adding a new section 7-216 to read as follows:

§ 7-216 Paid Prenatal Leave.

(a) All employers subject to the requirements of chapter 8 of title 20 of the Administrative Code are required to comply with the requirements for paid prenatal leave set forth in subdivisions 4-a, 7, and 10, and paragraph (a) of subdivision 5 of section 196-b of the labor law.

(b) In addition to the safe/sick time that employers must provide pursuant to subdivision b of section 20-913 of the Administrative Code, every employer, regardless of employer size, must allow an employee to use, and receive pay for, up to 20 hours of paid prenatal leave during any 52-week calendar period.

(c) An employer must provide paid prenatal leave when an employee communicates to the employer that the employee needs time off for health care services to be received by such employee during their pregnancy or related to such pregnancy, unless an employee specifically requests to use other leave in lieu of paid prenatal leave. Unless otherwise in conflict with state or federal law or regulations, an employer shall not require an employee to use other leave in lieu of paid prenatal leave, exhaust other leave before using paid prenatal leave, or use or exhaust paid prenatal leave before using other leave. An employer shall not request or require that an employee disclose such employee's medical condition or the nature of the health care services as a condition of providing paid prenatal leave.

(d) Consistent with section 20-915 of the Administrative Code, upon mutual consent of the employee and the employer, an employee's schedule may be changed in lieu of using paid prenatal leave, and an employer shall not require an employee, as a condition of taking paid prenatal leave, to work additional hours to make up for the original hours for which such employee used paid prenatal leave or to search for or find a replacement employee to cover the hours during which the employee uses paid prenatal leave.