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BY WEBSITE SUBMISSION / NO HARDCOPY SENT:

<https://rules.cityofnewyork.us/rule/protected-time-off-under-the-earned-safe-and-sick-time-act/>

Reference Number: 2026 RG 002

New York City Department of Consumer and Worker Protection
Attn: Office of Legal Counsel
42 Broadway, 8th Floor
New York, NY 10004

RE: Proposed Rule Amendments to the Earned Safe and Sick Time Act (ESSTA)

Dear Department of Consumer and Worker Protection:

I submit this public comment as a Registered Representative, with matters before the Office of Administrative Trials and Hearings (OATH), regarding the proposed amendments to the Earned Safe and Sick Time Act.

Having represented both employees and employers in labor matters, I offer the following analysis of the benefits and liabilities these amendments present to all stakeholders.

Overview of Proposed Amendments

Local Law 145 of 2025 significantly expands the ESSTA by adding new authorized uses for safe/sick time, including care for children or care recipients, attending legal proceedings related to subsistence benefits or housing, responding to public disasters, and addressing workplace violence.

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The amendments also require employers to provide 32 hours of unpaid safe/sick time immediately available on the first day of employment and each calendar year.

Additionally, the law codifies paid prenatal leave requirements previously found in NY Labor Law Section 196-b into the NYC Administrative Code with new penalties and relief provisions.

Benefits to Employees

The proposed amendments substantially enhance employee protections in several key areas:

1. **Immediate Access to Leave:** The requirement for 32 immediately available unpaid hours ensures employees can address urgent situations from their first day of employment without waiting for accrual.

This is particularly beneficial for workers facing domestic violence, family emergencies, or health crises.

2. **Expanded Leave Purposes:** The addition of childcare, legal proceedings for housing/benefits, public disasters, and workplace violence as authorized uses addresses real-world needs that previously fell outside ESSTA coverage.

This expansion recognizes the interconnected nature of health, safety, and economic stability.

3. **Enhanced Clarity:** The proposed rules provide detailed guidance on implementation, including which “leave bank” to draw from when employees have multiple types available.

The requirement that employers provide paid leave first unless employees request unpaid leave reduces confusion and ensures maximum benefit to workers.

4. **Strengthened Enforcement:** Codifying paid prenatal leave violations in the Administrative Code with specific penalties creates more robust local enforcement mechanisms.

Liabilities and Challenges for Employers

While these amendments advance worker protections, they create significant compliance challenges for employers:

1. **Administrative Complexity:** Employers must now track and manage multiple “leave banks” - paid accrued time under section 20-913(b), unpaid immediately available time under section 20-913(k), and paid prenatal leave under section 20-913(l).

This requires substantial payroll system modifications and staff training.

2. **Immediate Financial Impact:** The frontloading requirement means employers must provide 32 hours of unpaid leave immediately, potentially creating coverage gaps and scheduling difficulties, particularly for small businesses with limited staffing flexibility.
3. **Policy Documentation Requirements:** Employers must revise and redistribute written policies to address the expanded leave categories, notification procedures, and documentation requirements.

Failure to properly document these policies creates liability under section 20-924(e).

4. **Penalty Exposure:** The amendments establish a \$500 per employee per calendar year penalty for policy violations.

For employers with unofficial practices that don't comply, this could result in substantial retroactive liability affecting entire workforces.

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Conflict of Law Analysis: Removal of NY Labor Law Remedies

The most concerning aspect of these amendments is the removal of NY Labor Law remedies and penalties for paid prenatal leave violations, replacing them with Administrative Code provisions.

This creates several problematic conflicts:

1. **Jurisdictional Confusion:** Previously, paid prenatal leave violations under NY Labor Law Section 196-b provided employees with established state court remedies including liquidated damages up to 100% of unpaid wages, interest, and attorney's fees.

The proposed rules eliminate these remedies in favor of local administrative enforcement.

2. **Reduced Employee Protections:** NY Labor Law Section 196-b violations carry automatic liquidated damages unless employers prove good faith compliance.

The Administrative Code provisions appear to provide only the \$500 statutory penalty without the enhanced damages available under state law.

3. **Enforcement Gaps:** State labor law violations can be enforced through multiple venues such as state court, Department of Labor, and private right of action.

Limiting enforcement to DCWP administrative proceedings may reduce accessibility for employees, particularly those without resources to navigate administrative processes.

4. **Preemption Concerns:** Federal and state labor laws generally provide minimum standards that local laws can exceed but not diminish.

By removing more generous state remedies, these amendments may face legal challenges regarding preemption and the scope of local authority.

Practical Implementation Concerns

1. **Small Employer Impact:** Businesses with fewer than five employees must now provide unpaid leave immediately while tracking complex accrual requirements.

Many lack HR infrastructure to manage these obligations effectively.

2. **Record-Keeping Burden:** The detailed record-keeping requirements for multiple leave types, including differentiation between paid and unpaid usage, create substantial compliance costs.

Small businesses may need to invest in new payroll systems or professional services.

3. **Training and Communication:** Employers must train supervisors on expanded leave categories, proper documentation procedures, and the interaction between different “leave banks.”

Miscommunication could result in violations and penalties.

Recommendations for Balanced Implementation

To address these concerns while maintaining robust employee protections, I recommend:

1. **Phased Implementation:** Provide a 90-day grace period for employers to update systems and policies before enforcement begins.

This allows time for training and system modifications without compromising employee rights.

2. **Preserve State Law Remedies:** Rather than removing NY Labor Law remedies, create concurrent jurisdiction allowing employees to choose between state and local enforcement.

This preserves maximum protection while enabling local oversight.

3. **Small Business Support:** Develop simplified compliance templates and provide free training sessions for employers with fewer than 25 employees.

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Consider reduced penalties for good faith compliance efforts during the first year.

4. **Clarify Interaction with State Law:** Issue guidance explaining how these amendments interact with existing state and federal leave laws to prevent conflicts and ensure consistent application.
5. **Enhanced Employer Resources:** Create detailed FAQ documents and compliance checklists addressing common scenarios, particularly the interaction between different “leave banks” and documentation requirements.

Conclusion

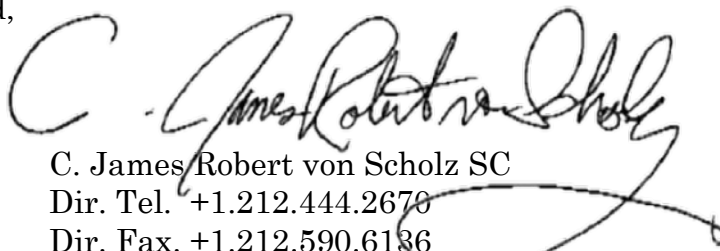
While these amendments significantly advance worker protections and address real workplace needs, the removal of established state law remedies and the complexity of implementation create substantial concerns.

The DCWP should consider modifications that preserve enhanced employee protections while providing clearer guidance and reasonable implementation timelines for employers.

The goal should be robust worker protections that employers can reasonably implement without creating enforcement gaps or reducing existing legal remedies.

I urge the Department to address the conflict of law issues and provide additional implementation support to ensure these important protections can be effectively realized.

Respectfully submitted,



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