

## **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 22, 2026. A public hearing was held on March 2, 2026, and comments regarding the rule were received.

### **Statement of Basis and Purpose of Rule**

The Department of Consumer and Worker Protection (“DCWP”) 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. Local Law 145 of 2025 amended ESSTA to add further authorized reasons that employees may take safe/sick time:

- to provide care for a child or care recipient;
- to attend a legal proceeding or take other actions related to subsistence benefits or housing;
- to respond to a public disaster; and
- to respond to workplace violence.

It also amended ESSTA by requiring employers to provide an additional 32 hours of unpaid safe/sick time on the first day of work for each employee and on the first day of each calendar year. In addition, Local Law 145 codified in the Administrative Code the paid prenatal leave requirement set forth in section 196-b of the New York Labor Law and added to the Administrative Code the amounts of employee relief and civil penalties imposed for violations of an employer’s obligation to provide paid prenatal leave.

This rule amendment does the following:

- 1) Defines the term “protected time off” to have the same meaning as “safe/sick time” as set forth in section 20-912 of the Administrative Code. “Protected time off” thus means time provided by an employer to an employee that can be used for the purposes described in sections 20-914(a) and 20-914(b) of the Administrative Code, which include to care for the employee or their family member’s health; to take safety measures when the employee or their family member experienced domestic violence, unwanted sexual contact, stalking, human trafficking, or workplace violence; to provide care for a child or care recipient; to attend a legal proceeding or take other actions related to subsistence benefits or housing; and to respond to a public disaster. Protected time off includes time provided pursuant to sections 20-913(b) and 20-913(k) of the Administrative Code and includes both paid and unpaid time off from work.
- 2) Brings the rules into alignment with the statutory amendments made by Local Law 145 of 2025 by incorporating the additional authorized uses of protected time off and

- the requirement to provide immediately available hours into the existing regulatory framework
- 3) Provides guidance to employers regarding their new compliance obligations, including on which bank of leave to draw from when employees have protected time off available for use pursuant to both sections 20-913(b) and 20-913(k) of the Administrative Code.
  - 4) Removes from the rules the remedies and civil penalties associated with violations of the paid prenatal leave requirement in the New York Labor Law, because different remedies and civil penalties associated with these violations now appear in the Administrative Code, and the rule should reflect the remedies and civil penalties associated with the Administrative Code.
  - 5) Clarifies the civil penalties and employee relief that employers may be liable for when DCWP finds that the employer has an official or unofficial policy or practice of not providing or refusing to allow use of paid prenatal leave and describes the evidence that may establish such a finding.

In response to its Notice of Proposed Rulemaking, DCWP received comments from trade associations, an employee benefits broker, a hospital, law firms specializing in employment law, and members of the public, including healthcare workers. Some comments supported the rules, while others made suggestions for DCWP's enforcement processes and timelines. DCWP did not make changes in response to comments that addressed issues outside the scope of this rulemaking, such as comments objecting to new or previously existing requirements that appear in the Administrative Code and comments relating to DCWP's enforcement of the ESSTA amendments to the Administrative Code. To address comments seeking clarification of employer obligations, changes in this final rule include:

- Adding language to clarify that employers may meet their obligation to provide 32 immediately available hours of unpaid protected time off by providing some or all of this time as paid leave.
- Specifying that employers should provide paid protected time off to comply with other legal obligations, or to meet the criteria for an overtime exemption under state or federal law, such as the Fair Labor Standards Act salary basis test.
- Adding language describing employers' obligations with respect to the bank of 32 immediately available hours when rehiring an employee within the same calendar year.
- Clarifying an employer's obligation to provide employees with information about protected time off accrual and balance upon separation from employment, when the employer uses an electronic system to issue pay statements or other documentation related to protected time off or paid prenatal leave.

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.

§1. Subchapter B of chapter 7 of Title 6 of the Rules of the City of New York is amended to read as follows:

## Subchapter B: [Earned Safe and Sick Time] Protected Time Off

### § 7-201 Definitions.

(a) As used in this subchapter, the terms "calendar year", "department", "domestic worker", "employee", "employer", "health care provider", "paid prenatal leave", "safe/sick time", "safe time", and "sick time" [shall ]have the same meanings as set forth in section 20-912 of the Administrative Code.

(b) As used in this subchapter and section 20-913 of the Administrative Code, the term "net income" [shall have]has the same meaning as "entire net income" as set forth in section 208 of the New York State Tax Law.

[(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.]

(c) As used in this subchapter, "protected time off" has the same meaning as "safe/sick time" as set forth in section 20-912 of the Administrative Code.

(d) As used in this subchapter, the term "immediately available hours" means protected time off provided by an employer in accordance with subdivision k of section 20-913 of the Administrative Code that can be used for the purposes described in section 20-914 of the Administrative Code.

### § 7-202 Employer Size.

(a) Employer size shall be determined based on the employer's total number of employees nationwide. Employer size during a given calendar year shall be determined by counting the highest total number of employees concurrently employed at any point during the calendar year to date. For the purposes of counting the number of employees concurrently employed:

(1) Part-time employees shall be considered employed each working day of the calendar week;

(2) Employees jointly employed by more than one employer shall be counted by each employer, whether or not their names appear on the employer's payroll; and

(3) Employees on paid or unpaid leave, including [safe/sick time] protected time off, leaves of absence, disciplinary suspension, or any other type of temporary absence, shall be counted as long as the employer has a reasonable expectation that the employee will later return to active employment.

(b) For employers that increase the number of employees during a calendar year from fewer than five to between five to 99 employees:

(1) The duty to provide paid [safe/sick time] protected time off shall be prospective from the date of the increase in the number of employees and shall not entitle an employee to reimbursement for previously used unpaid [safe/sick time] protected time off.

(2) After the increase in the number of employees, an employer must allow an employee to use, and receive pay for, up to 40 hours of accrued [safe/sick time] protected time off, less the number of unpaid [safe/sick time] protected time off hours the employee had previously used in that calendar year.

Example [1]: Liz is hired by an employer with only one other employee on January 1[, 2021]. The employer has a frontloading policy, so Liz has [40] 72 hours of unpaid [safe/sick time] protected time off immediately available for use from the start of her employment: 40 hours of unpaid protected time off pursuant to section 20-913(b) and 32 immediately available hours pursuant to section 20-913(k). Liz uses 10 hours of [unpaid safe/sick time] protected time off from January 1 to May 31, [2021,] bringing her [accrual] balance of unpaid protected time off to [30] 62 hours. On June 1, [2021,] the employer brings on five additional employees, so the employer is now required to provide each employee with up to 40 hours of paid [safe/sick time] protected time off pursuant to section 20-913(b) plus 32 unpaid immediately available hours per year. If Liz uses any additional [safe/sick time in 2021] protected time off during this calendar year, she must be paid for up to 30 hours of [safe/sick time] protected time off used. The employer is not obligated to pay Liz for the 10 hours of [safe/sick time] protected time off she used before June 1[, 2021].

[Example 2: Liz is hired by an employer with only one other employee on January 1, 2021. The employer has an accrual policy. Liz works approximately 30 hours per week and accrues 20 hours of unpaid sick time between January and May 2021. She uses 10 of those hours of unpaid sick time in May 2021, bringing her accrual balance to 10 hours as of May 31, 2021. On June 1, 2021, the employer brings on five additional employees, so the employer is now required to provide each employee with up to 40 hours of paid safe/sick time per year. If Liz uses any of the remaining 10 hours of safe/sick time she already accrued as of May 31, 2021, she must be paid for those 10 hours and any additional safe/sick time she accrues and uses, up to the 40-hour per calendar year limits set forth in subdivision (f) of 6 RCNY section 7-214. The employer is not obligated to pay Liz for the 10 hours of safe/sick time she used before June 1, 2021.]

(c) For employers that increase the number of employees during a calendar year from 99 or fewer to 100 or more, an employee's right to use additional paid [safe/sick time] protected time off up to 56 hours shall be prospective from the date of such increase in the number of employees.

Example [1]: [An] Shane works for an employer with a calendar year of January 1 - December 31 that has 90 employees. Shane [works 40 hours per week. She used 20 hours of safe/sick time in 2020 and carried] carries over 20 hours [to 2021] of paid protected time off accrued in calendar year one to calendar year two of her employment. In June [2021] of calendar year two, the employer [hired] hires several new employees, bringing the total headcount to 110. Shane [has not used safe/sick time in 2021, and had worked 1,050 hours] accrued 30 hours of paid protected time off between January [2021] and the date the employee headcount went over 99 employees, and did not use any paid protected time off in calendar year two. She therefore has [55] 50 hours of [safe/sick time] paid protected time off available for immediate use: [35] 30 hours accrued in [2021(1050 / 30 = 35)] calendar year two plus the 20 hours she carried over from [2020 equals 55] calendar year one. She also has 32 unpaid immediately available hours.

[Example 2: In the same scenario, Shane used 40 hours of accrued safe/sick time in May 2021, before her employer's headcount increased above 100. After her employer's headcount

increases in June 2021, Shane has 15 hours of safe/sick time available for immediate use: 35 hours accrued in 2021 plus the 20 hours carried over from 2020, less 40 hours used in 2021.]

(d) Reductions in the number of employees working for an employer shall not reduce employee [safe/sick time] protected time off entitlements under § 20-913(b) of the Administrative Code until the following calendar year.

Example: An employer with a calendar year of January 1 - December 31 has four employees. On April 1[, 2021,] the employer hires three new employees, bringing the employer's total number of employees to seven. On November 1[, 2021], the employer lays off four employees, reducing the employer's total number of employees to three. The employer must begin providing paid [safe/sick time] protected time off to all employees on April 1[, 2021]. The employer must continue providing paid [safe/sick time] protected time off to the three remaining employees through at least December 31[, 2021], the last day of the current calendar year.

### § 7-203 Employees.

(a) An employee, as defined by section 20-912 of the Administrative Code, is "employed for hire within the City of New York" if the employee performs work, including work performed by telecommuting, while the employee is physically located in New York City, regardless of where the employer is located. An employee who only performs work, including by telecommuting, while physically located outside of New York City, is not "employed for hire within the City of New York," even if the employer is located in New York City. As of September 30, 2020, hours worked within New York City also count towards an employee's accrual of sick leave under New York Labor Law section 196-b.

(b) An employee with a primary work location outside of New York City is "employed for hire within the City of New York" if they regularly perform, or are expected to regularly perform, work in New York City during a calendar year. For such an employee, only hours worked within New York City must count toward the accrual of [safe/sick time] protected time off for the purpose of § 20-913(b) of the Administrative Code.

Example 1: A retail business based in New Jersey with locations in both New Jersey and New York City hires a new employee. The retail business has 70 employees between the two locations. The new employee, who lives in New Jersey, will work primarily at a New Jersey location but may be asked to cover shifts in New York City when needed due to staffing shortages at those locations. The employer estimates that some months, the employee will work one to three six to eight-hour shifts in New York City, but that their New York City hours will vary and some months the employee may not work in New York City at all. This is work that the employer expects the employee to perform regularly, so the employee is employed for hire within the City of New York for the purposes of § 20-912 of the Administrative Code. The employee must accrue one hour of [safe/sick time] paid protected time off for every 30 hours worked within New York City and have a separate bank of 32 immediately available hours. The employee [and] must be allowed to use [their accrued hours] this protected time off for the reasons [provided by] set forth in section 20-914 of the Administrative Code when scheduled to work within New York City.

Example 2: An employee lives in Florida and works from home for a company based in Manhattan. The employee is required to attend daylong meetings at the Manhattan headquarters approximately twice a year. The employee is not "employed for hire within the City of New York" under section 20-912.

Example 3: A custom cabinetry business based in Massachusetts is commissioned by a New York City resident to build kitchen cabinets. After the cabinets are completed at the company's Massachusetts studio, a Massachusetts-based employee travels to New York City and spends eight hours installing them in the client's residence. The employer does not currently expect the employee to go back to New York City in the course of her employment within the remainder of the calendar year. The employee is not "employed for hire within the City of New York" under section 20-912.

Example 4: A construction business based in Nassau County does business both within New York City and on Long Island. An employee works a total of 300 hours for the employer at a site in Queens from June 1[, 2021] to July 26[, 2021]. The employee is employed for hire within the City of New York for the purposes of section 20-912 of the Administrative Code and accrued 10 hours of [safe/sick time] paid protected time off. The employee continues working for the employer at a site on Long Island from July 27[, 2021] to September 28[, 2021], working a total of 450 hours during that timeframe and accruing 15 hours of sick leave under section 196-b of the New York Labor Law. On October 1[, 2021,] the employee is scheduled to report to work on Long Island but is unable to do so due to illness. The employee is not entitled to use [sick time] protected time off under section 20-914 of the Administrative Code at the time of his illness because he was scheduled to report for work on Long Island. However, the employee is covered by section 196-b of the New York Labor Law, and has a total of 25 hours of paid sick time accrued and available for immediate use under section 196-b from the time worked in New York City and Nassau County.

#### § 7-204 Minimum Increments and Fixed Intervals for the Use of [Safe/Sick Time] Protected Time Off 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] protected time off 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] protected time off 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] Alex works for an employer [has] with a written policy setting a minimum increment of four hours per day for use of [safe/sick time] protected time off. [The employee has not yet accrued four hours of time, but is entitled to use the time he or she has already accrued.] Last month, when she had the flu, Alex used her 32 immediately available hours plus most of her paid protected time off, and has only three hours of paid protected time off left. She has a medical appointment at 4:00 p.m. this week, and would like to use one hour of paid protected time off at the end of the work day to attend the appointment. 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] protected time off 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] protected time off and return to work the same day. The employer's written [sick time] protected time off 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] protected time off 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] protected time off policies, employees must use [sick time] protected time off 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] protected time off 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] Protected Time Off and Paid Prenatal Leave.

(a) An employer may require an employee to provide reasonable notice of the need to use [safe/sick time] protected time off 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 6 RCNY section 7-211.

(b) An employer that requires notice of the need to use [safe/sick time] protected time off 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] protected time off 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] protected time off 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] protected time off 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] protected time off 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] protected time off 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] Protected Time Off and Paid Prenatal Leave.

(a) When an employee's use of [safe/sick time] protected time off 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. For any other use of protected time off, documentation that shows the reason for the amount of protected time off 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] protected time off 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] protected time off 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] protected time off 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] protected time off 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] protected time off policy required by 6 RCNY section 7-211.

(f) An employer shall not require documentation that the use of [safe/sick time] protected time off 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] protected time off or paid prenatal leave lasts three or fewer consecutive work days.

§ 7-207 Notice of [Safe/Sick Time] Protected Time Off Accruals and Use of [Safe/Sick Time] Protected Time Off 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] protected time off accrued and used during the relevant pay period, differentiating between paid and unpaid protected time off. It must also inform the employee of the total balance of the employee's [accrued safe/sick time] protected time off pursuant to section 20-913(b) available for use and the total balance of the employee's unpaid hours available for use. As set forth in 6 RCNY section 7-214(f), an employee's [accrued safe/sick time] protected time off balance pursuant to section 20-913(b) may exceed the amount of [safe/sick time] protected time off pursuant to section 20-913(b) that 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] protected time off pursuant to section 20-913(b) 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] protected time off 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 6 RCNY 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 during the employee's tenure. When the employee's tenure ends, the employer must either continue to provide the employee with access to the employer's electronic system for six months, or alternatively, provide the employee with a written statement containing the content required by 6 RCNY section 7-212(b)(4) for the employee's last pay period no later than one week following the employee's last payday date.

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

(a) An employer shall pay an employee for paid [safe/sick time] protected time off or paid prenatal leave at the employee's regular rate of pay at the time the paid [safe/sick time] protected time off 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] protected time off 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] protected time off or paid prenatal leave actually used by the employee from the employee's [safe/sick time accruals or bank of paid prenatal leave, respectively] protected time off or paid prenatal leave banks, 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] protected time off 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/sick time] protected time off 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] protected time off or paid prenatal leave.

#### § 7-209 Payment of [Safe/Sick Time] Protected Time Off and Paid Prenatal Leave.

(a) [Safe/sick time] Protected time off or paid prenatal leave must be paid no later than the payday for the next regular payroll period beginning after the [safe/sick time] protected time off 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] protected time off or paid prenatal leave pursuant to section 20-914(d) of the Administrative Code or 6 RCNY section 7-216, the employer is not required to pay [safe/sick time] protected time off 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] protected time off 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] protected time off 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] protected time off policy required by 6 RCNY section 7-211.

#### § 7-210 Employer's Sale of Business or Transfer of Employees.

(a) Business sales, transfers in corporate ownership, or changes in subcontracting relationships between corporate entities shall not impact employees' [safe/sick time] protected time off balances. When such changes occur, an employee will retain and may use all [accrued safe/sick time] protected time off if the employee continues to perform work within the City of New York for the successor employer or contractor. Failure to properly transfer an employee's [accrued safe/sick time] protected time off to a successor employer constitutes a policy or practice of not providing or refusing to allow the use of [accrued safe/sick time] protected time off in violation of section 20-913 of the Administrative Code. The original and successor employer and any joint employer(s) are individually and jointly liable for the satisfaction of all penalties and employee relief imposed for the violation of section 20-913, regardless of any agreement between the original and successor employer to the contrary.

Example: Company A is in the business of operating a call center in Brooklyn. Company B, a staffing agency, provides Company A with workers to answer its phones. The phone operators are nominally employees of Company B. After one year of answering Company A's phones as an employee of Company B, a phone operator is informed that Company A has shifted its business to Company C, and so her nominal employer will now be Company C. Her job duties and the location of her work do not change. The phone operator's [accrued safe/sick time] protected time off must be transferred to Company C. If this does not occur, Company A, Company B, and Company C are jointly and severally liable for the violation of section 20-913 of the Administrative Code.

(b) If the successor employer falls within a smaller employer size threshold from the former employer, the employee is entitled to use and be compensated for unused [safe/sick time accrued while working for the] accrued protected time off provided by the former employer, until such [safe/sick time] protected time off is exhausted.

Example: Fast Food LLC is a franchisee of a national fast food chain with 500 employees in New York City. Fast Food LLC frontloads employees with 56 hours of [safe/sick time] paid protected time off pursuant to section 20-913(b) per calendar year; employees also have 32 hours of unpaid protected time off available pursuant to section 20-913(k). Quick Pizza LLC, a new company seeking to enter the fast food franchising market in Brooklyn, acquires a subset of Fast Food LLC's locations [in August 2021]. After the acquisition, Quick Pizza LLC has 80 employees. Jimmy, an employee at one of the acquired locations, had used 46 hours of [safe/sick time in 2021] paid protected time off during the current calendar year prior to the transfer. He is entitled to use and be compensated for 10 hours of [safe/sick time he had remaining in his safe/sick time balance at the time of the transfer] paid protected time off that remained in his bank at the time of the transfer and to use 32 hours of unpaid protected time off. If Jimmy does not use any of the 10 hours of his remaining [safe/sick time] paid protected time off, at the end of the calendar year[,], his employer must allow him to carry the unused hours over to the next calendar year pursuant to section 20-913(h) of the Administrative Code.

(c) A successor employer must provide employees with its written [safe/sick time] protected time off policies at the time of sale or acquisition, or as soon as practicable thereafter, which shall include a policy that complies with this section.

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

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

(b) Every employer must distribute its written [safe/sick time] protected time off 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] protected time off 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] protected time off provided pursuant to section 20-913(b) of the Administrative Code as follows:

(i) If an employer provides employees with an amount of [safe/sick time] protected time off that meets or exceeds the requirements of [the Earned Safe and Sick Time Act] section 20-913(b) of the Administrative Code 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] protected time off", then the employer's written [safe/sick time] protected time off policy must specify the amount of frontloaded [safe/sick time] protected time off to be provided and that such frontloaded time is immediately available for use;

(ii) If the employer does not [apply] provide frontloaded [safe/sick time] protected time off to meet its obligation under section 20-913(b) of the Administrative Code, then the employer's written [safe/sick time] protected time off policy must specify that accrual of [safe/sick time] protected time off starts at commencement of employment, the rate at which an employee accrues [safe/sick time] protected time off, and that an employee may use [safe/sick time] protected time off as it accrues;

(2) The amount of unpaid protected time off (a minimum of 32 hours) provided pursuant to section 20-913(k) of the Administrative Code, and that such time is immediately available for use on the first day of employment and the first day of each new calendar year;

[(2)] (3) The availability of a separate bank of 20 hours of paid prenatal leave during any 52-week calendar period, in accordance with section 20-913(l) of the Administrative Code[.];

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

(i) Any requirement that an employee provide notice of a need to use [safe/sick time] protected time off 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] protected time off or paid prenatal leave in accordance with section 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] protected time off 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] protected time off 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 or other situation that led the employee to use [sick time] protected time off 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] protected time off or paid prenatal leave will be kept confidential and not disclosed to anyone without the employee's written permission or as required by law.

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

[(5)] (6) If an employer uses a term other than "protected time off," "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] protected time off 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 6 RCNY section 7-107. 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] protected time off 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] protected time off and paid prenatal leave policies along with any forms or procedures required by the employer related to the use of [safe/sick time] protected time off or paid prenatal leave shall not deny permission to use [safe/sick time] protected time off or paid prenatal leave, payment of [safe/sick time] protected time off 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.

#### § 7-212 Employer Records.

(a) Employers must create and retain records demonstrating compliance with the requirements of the Earned Safe and Sick Time Act, including records of any policies required, pursuant to this subchapter, for a period of three years unless otherwise required by any other law, rule or regulation.

(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] protected time off 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] protected time off accrued pursuant to section 20-913(b) of the Administrative Code; the amount of protected time off [and] used during the pay period, differentiating between paid and unpaid protected time off; the employee's total balance of [accrued safe/sick time,] protected time off provided pursuant to section 20-913(b) of the Administrative Code; the amount of [accrued safe/sick time] protected time off available for use by the employee, differentiating between paid and unpaid protected time off; 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.

(c) If the department issues a written request for information or records, an employer shall provide the department with such information or records, upon appropriate notice, at the department's office. Alternately, an employer shall provide the department with access to such information or records upon appropriate notice and at a mutually agreeable time of day at the employer's place of business.

(d) "Appropriate notice" shall mean 14 days' written notice, unless the employer agrees to a lesser amount of time, the department's request for the information or records is a second or subsequent request made to the same employer during the same investigation or case as the first request, or the department has reason to believe that:

(1) the employer will destroy or falsify records;

(2) the employer is closing, selling or transferring its business, disposing of assets or is about to declare bankruptcy;

(3) the employer is the subject of a government investigation or enforcement action or proceeding related to wages and hours, unemployment insurance, workers' compensation, discrimination, or any matter under the jurisdiction of the department; or

(4) more immediate access to records is necessary to prevent retaliation against employees.

(e) The department will make two attempts by letter, email or telephone to arrange a mutually agreeable time of day for the employer to provide access to its records in accordance

with subdivision(c) of this section. If these attempts are not successful, the department may set a time to access records at the employer's place of business during regular business hours, upon two days' notice.

#### § 7-213 Enforcement and Penalties.

(a) A finding that an employer has an official or unofficial policy or practice of not providing or refusing to allow the use of [safe time or sick time] protected time off or paid prenatal leave as required under the Earned Safe and Sick Time Act constitutes a violation of section 20-913 of the Administrative Code for each and every employee affected by the policy and will be subject to penalties as provided in section 20-924(e) of the Code.

(b) For the purpose of section 20-924(d)(v) of the Administrative Code, an employee shall be considered "covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of [accrued] safe/sick time or paid prenatal leave in violation of section 20-913" if they were employed by the employer during the time period that the official or unofficial policy or practice that violated section 20-913 was in effect. As used in section 20-924(d)(v) of the Administrative Code, "safe/sick time" has the same meaning as "protected time off." If the unlawful policy or practice was in effect for multiple calendar years, a separate violation of section 20-913 shall be considered to have occurred for each calendar year the policy or practice remained in effect.

(c) There shall be a reasonable inference that the employer, as a matter of official or unofficial policy or practice, does not provide or refuses to allow the use of [accrued safe/sick time] protected time off or paid prenatal leave in violation of section 20-913 of the Administrative Code, if an employer:

(1) Fails to maintain or distribute a written [safe/sick time] protected time off policy or written paid prenatal leave policy as required by 6 RCNY section 7-211; and

(2) Fails to maintain adequate records of employees' [accrued safe/sick time] protected time off or paid prenatal leave use and balances as required under 6 RCNY section 7-212.

(d) Additional evidence that an employer maintains a policy or practice of not providing or refusing to allow the use of [accrued safe/sick time] protected time off or paid prenatal leave may include, but is not limited to:

(i) Unlawful barriers to employees' use of [safe/sick time] protected time off or paid prenatal leave, whether written or unwritten, such as requirements that workers find replacement workers to cover shifts missed due to [safe/sick time] protected time off or paid prenatal leave, unreasonable notice requirements, requirements that workers provide [medical] documentation of absences of three consecutive days or fewer, or other unlawful limits on use;

(ii) Probation periods, waiting periods, blackout days, or other measures that prevent employees from using [safe/sick time as it is accrued] protected time off or paid prenatal leave;

(iii) Prohibitions on use of [safe/sick time] protected time off or paid prenatal leave for purposes authorized by law, whether written or unwritten, such as prohibitions on use of [safe/sick time] protected time off for leave to care for a family member pursuant to section 20-914(a)(1)(b) of the Administrative Code;

(iv) Failure to pay employees entitled to paid [safe/sick time] protected time off or paid prenatal leave for time off [due to safe/sick time authorized reasons];

(v) Failure to provide for the accrual of [safe/sick time] protected time off at the rate required by section 20-913(b) of the Administrative Code;

(vi) Failure to properly carry over [safe/sick time] protected time off hours at the end of an employer's calendar year, if the employer does not properly utilize a frontloading system;

(vii) Official or unofficial absence control policies that penalize the use of [safe/sick time] protected time off or paid prenatal leave, such as points systems that do not differentiate between [safe/sick time] protected time off or paid prenatal leave absences and other absences; or

(viii) Failure to inform employees that [safe/sick time] protected time off is available.

Example 1: An employer with 83 employees does not maintain or distribute a written [safe/sick time] protected time off policy and does not provide employees with paystubs or other written documentation showing their [safe/sick time] protected time off accruals and balances. Employees may take time off due to illness on an ad hoc basis and are paid for this time off at their supervisors' discretion. As a result, some employees are paid for sick time and others are not. The employer has a policy or practice of not providing or refusing to allow the use of [accrued safe/sick time] protected time off in violation of section 20-913 of the Administrative Code. Each employee is entitled to relief in the amount of \$500 per calendar year the unlawful policy or practice remains in effect under section 20-924(d)(v) of the Administrative Code.

Example 2: An employer with 10 employees maintains a written [safe/sick time] protected time off policy that provides that covered employees will have "[at least 40] 72 hours of sick leave available at the beginning of a given year." However, the policy is not distributed to all employees. The employer does not provide employees with paystubs or other written documentation showing their [safe/sick time] protected time off accruals and balances. Employees are generally only paid for sick leave if they provide medical documentation of the reason for their absence, regardless of the length of the absence. This employer has a policy or practice of not providing or refusing to allow the use of [accrued safe/sick time] protected time off in violation of section 20-913 of the Administrative Code, and each employee is entitled to relief in the amount of \$500 per calendar year the unlawful policy or practice remains in effect under section 20-924(d)(v) of the Code.

(e) If an employer, as a matter of official or unofficial policy or practice, does not provide or refuses to allow the use of [accrued safe/sick time] protected time off in violation of section 20-913 of the Administrative Code, the relief granted to each and every employee affected by the policy or practice must include (1) application of the number of hours of [safe/sick time] protected time off the employee should have accrued to the employee's [safe/sick time] balance of protected time off provided pursuant to section 20-913(b) of the Administrative Code, provided that such balance does not exceed two times the maximum number of hours available for use in a calendar year [in addition to]; (2) application of 32 hours of unpaid protected time off to the employee's balance of protected time off provided pursuant to section 20-913(k) of the Administrative Code; and (3) monetary relief in the amount of \$500 per employee per calendar year the policy or practice was in effect, as provided in section 20-924(d)(v). If an employer, as a matter of official or unofficial policy or practice, does not provide or refuses to allow the use of paid prenatal leave in violation of section 20-913 of the Administrative Code, the relief granted to each and every employee affected by the policy or practice must include (1) application of 20 hours of paid prenatal leave to the employee's paid prenatal leave balance; and (2) monetary

relief in the amount of \$500 per employee per calendar year the policy or practice was in effect, as provided in section 20-924(d)(v).

(f) For the purposes of this section, an employer's calendar year shall be the 12-month period from January 1 through December 31, unless the employer has determined a different calendar year, uses this calendar year in its administration of its [safe/sick time] protected time off policy, and has communicated this to employees in its written policy and in the notice required by section 20-919 of the Administrative Code.

[(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.]

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

(a) If an employee is scheduled and available to work for an on-call shift and is compensated for the scheduled time regardless of whether the employee works, the scheduled time constitutes hours worked for the purposes of accrual under the Earned Safe and Sick Time Act.

(b) For employees who are paid on a piecework basis, accrual of [safe/sick time] protected time off is measured by the actual length of time spent performing work.

(c) For employees who are paid on a commission basis, accrual of [safe/sick time] protected time off is measured by the actual length of time spent performing work.

(d) Per diem employees may use [safe/sick time] protected time off 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] protected time off 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] protected time off 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] protected time off 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] protected time off 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.

(f) An employee of an employer with ninety-nine or fewer employees may carry over up to 40 hours of unused [safe/sick time] protected time off from one calendar year to the next, and an employee of an employer with one hundred or more employees may carry over up to 56 hours of unused [safe/sick time] protected time off from one calendar year to the next, unless the employer has a policy of paying employees for unused [safe/sick time] protected time off at the end of the calendar year in which such time is accrued and providing the employee with an amount of paid [safe/sick time] protected time off that meets or exceeds the requirements of [the Earned Safe and Sick Time Act] section 20-913(b) of the Administrative Code for such employee for the immediately subsequent calendar year on the first day of such year in accordance with section 20-913(h) of the Administrative Code. Regardless of the number of hours an employee carried over from the previous calendar year, an employer with ninety-nine or fewer employees is only required to allow employees to accrue up to 40 additional hours of [safe/sick time] protected time off in a calendar year, and an employer with one hundred or more employees is only required to allow employees to accrue up to 56 additional hours of [safe/sick time] protected time off in each calendar year. If an employee's [safe/sick time] balance of protected time off provided pursuant to section 20-913(b) of the Administrative Code exceeds 40 or 56 hours in a single calendar year, as applicable, an employer is only required to allow the employee to use up to 40 or 56 hours in such calendar year. An employer is not required to carry over the unused portion of the immediately available hours of unpaid protected time off provided pursuant to section 20-913(k) of the Administrative Code from one calendar year to the next.

Example 1: An employee of an employer with 50 employees accrues 40 hours of [safe/sick time] protected time off in calendar year one and uses 20 hours of [safe/sick time] protected time off in calendar year one. She carries over 20 hours from calendar year one to calendar year two, accrues 40 hours in calendar year two, and does not use any hours in calendar year two. Her [safe/sick time] balance of protected time off available pursuant to section 20-913(b) of the Administrative Code at the end of calendar year two is 60 hours (20 hours carried over from calendar year one plus 40 hours accrued in calendar year two). She may carry over 40 of those 60 hours into calendar year three and accrue another 40 hours in calendar year three. However, she may only use 40 hours in calendar year three. She also has 32 immediately available hours of unpaid protected time off available for use each calendar year.

Example 2: An employee of an employer with 300 employees accrues 56 hours of [safe/sick time] protected time off in calendar year one and uses six hours of [safe/sick time] protected time off in calendar year one. She carries over 50 hours from calendar year one to calendar year two, accrues 56 hours in calendar year two, and does not use any [safe/sick time] protected time off hours in calendar year two. Her [safe/sick time] balance of protected time off available pursuant to section 20-913(b) of the Administrative Code at the end of calendar year two is 106 hours (50 hours carried over from calendar year one plus 56 hours accrued in calendar year two). She may carry over 56 of those 106 hours into calendar year three and

accrue another 56 hours in calendar year three. However, she may only use 56 hours of protected time off provided pursuant to section 20-913(b) in calendar year three. She also has 32 immediately available hours of unpaid protected time off available for use each calendar year.

(g) Employee accrual of [safe/sick time] protected time off must account for all time worked, regardless of whether time worked is less than a 30-hour increment. For the purposes of calculating accrual for time worked in increments of less than 30 hours, employers may round accrued [safe/sick time] protected time off to the nearest five minutes, or to the nearest one-tenth or quarter of an hour, provided that it will not result, over a period of time, in a failure to provide the proper accrual of [safe/sick time] protected time off to employees for all the time they have actually worked.

#### § 7-215 Employee Abuse of [Safe/Sick Time] Protected Time Off 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] protected time off 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 20-913(l) of the Administrative Code and 6 RCNY 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] protected time off or paid prenatal leave may include, but are not limited to a pattern of: (1) use of unscheduled [safe/sick time] protected time off or paid prenatal leave on or adjacent to weekends, regularly scheduled days off, holidays, vacation or pay day, (2) taking scheduled [safe/sick time] protected time off or paid prenatal leave on days when other leave has been denied, and (3) taking [safe/sick time] protected time off or paid prenatal leave on days when the employee is scheduled to work a shift or perform duties perceived as undesirable.

#### § 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] Pursuant to section 20-913(l) of the Administrative Code, in addition to the [safe/sick time] protected time off that employers must provide pursuant to [subdivision] subdivisions b and k 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.

#### § 7-217 Requirement to Provide 32 Immediately Available Hours of Protected Time Off.

(a) When an employee is absent for a reason described in section 20-914 of the Administrative Code and has available both paid and unpaid protected time off, the employer shall provide paid protected time off to cover the employee's absence, unless the employee requests to draw from the bank of unpaid protected time off instead. When an employee has not accrued enough paid protected time off, the employer shall provide unpaid protected time off to cover the employee's absence as provided in section 20-913(k) of the Administrative Code.

Example: Beth works at a company with an accrual policy. She carries over 20 hours of accrued paid protected time off into a new calendar year. On January 1, she also has 32 hours of unpaid protected time off available. The daycare Beth's daughter attends closes for a school holiday, so Beth needs to take three days (24 hours) of protected time off for childcare. Beth's employer must pay her for 20 hours of protected time off and also provide 4 hours of unpaid protected time off.

(b) An employer may fulfill its obligation to provide 32 unpaid immediately available hours by providing some or all of this time as an equivalent amount of paid protected time off. An employer should pay employees for this immediately available protected time off when necessary to comply with other legal obligations, or to meet the criteria for an overtime exemption under state or federal law, such as the Fair Labor Standards Act salary basis test. Providing paid immediately available hours does not affect an employer's separate obligation to provide paid protected time off pursuant to section 20-913(b) of the Administrative Code, if applicable. Consistent with section 20-913(k) of the Administrative Code, at least 32 hours of protected time off, whether paid or unpaid, must be immediately available on an employee's first day of employment and on the first day of each calendar year.

(c) When there is a separation from employment and the employee is rehired within the same calendar year, the employer must reinstate the employee's unused portion of immediately available hours, in addition to reinstating accrued protected time off if required pursuant to section 20-913(j) of the Administrative Code.