Consumer and Worker Protection

Comments Received by the Department of Consumer and Worker Protection on

Proposed Rules related to Protected Time Off

MANHATTAN CHAMBER OF COMMERCE

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Testimony Before the

New York City Department of Consumer and Worker Protection

Public Hearing on Proposed Rules Amending Regulations Related to the

Earned Safe and Sick Time Act ("ESSTA")

March 2, 2026

Submitted by:

Jessica Walker

President & CEO, Manhattan Chamber of Commerce

INTRODUCTION

Good morning. My name is Jessica Walker, and I am the President and CEO of the Manhattan Chamber of Commerce, which represents more than 125,000 businesses across the borough of Manhattan. Thank you for the opportunity to testify on the Department of Consumer and Worker Protection's proposed rules amending regulations related to the Earned Safe and Sick Time Act.

The Manhattan Chamber supports the fundamental principle that workers deserve access to protected time off for health, safety, caregiving, and other essential life needs. Our member businesses overwhelmingly understand that supporting employee well-being is not only the right thing to do—it is sound business practice that reduces turnover, improves productivity, and strengthens workplace culture.

However, we have significant concerns about several aspects of these proposed rules as they relate to implementation burden, regulatory clarity, and the cumulative impact on Manhattan's small business community—particularly the storefront businesses, immigrant-owned enterprises, and minority-owned firms that are the backbone of our local economy and that our Foundation exists to serve.

THE CUMULATIVE COMPLIANCE BURDEN ON SMALL BUSINESSES

These proposed rules implement Local Law 145 of 2025, which significantly expanded ESSTA by adding new categories of authorized leave usage—including childcare, legal proceedings related to subsistence benefits or housing, public disaster response, and workplace violence—while also requiring employers to provide an **additional** 32 hours of unpaid protected time off, immediately available on an employee's first day of work and on the first day of each calendar year. This is on top of the existing 40- or 56-hour paid leave obligations under Section 20-913(b).

We want to be direct: the scope of this expansion is substantial. A small employer with five or more employees is now required to provide each worker with up to 72 hours of protected time off per year—40 hours paid and 32 hours unpaid—available from day one of employment. For larger employers with 100 or more workers, the total rises to 88 hours. When combined with the separate 20-hour paid prenatal leave entitlement, total potential leave obligations can reach 92 to 108 hours per employee, per year.

For a restaurant on the Upper West Side with 12 employees, a dry cleaner in Washington Heights with 6 workers, or a small retail shop in Chinatown with 8 staff members, these are not abstract numbers. They represent real scheduling challenges, real payroll complexity, and real costs—all of which must be absorbed by businesses still navigating rising rents, higher operating costs, and a challenging commercial environment.

CONCERNS REGARDING REGULATORY CLARITY

THE "PROTECTED TIME OFF" TERMINOLOGY TRANSITION

The proposed rules rebrand "safe/sick time" as "protected time off" throughout the regulatory framework. While we understand the intent to reflect the broadened scope of authorized uses, this terminology change will require every employer in the city to revise written policies, update payroll systems, retrain HR personnel, and redistribute notices to all employees. For the thousands of Manhattan businesses that spent years bringing their policies into compliance with the original ESSTA framework, this is not a trivial administrative exercise.

We urge DCWP to provide a reasonable transition period—we recommend at least 12 months from the effective date of these rules—during which employers who are making good-faith efforts to update their policies and documentation will not face enforcement actions for continued use of the prior "safe/sick time" terminology.

INTERACTION BETWEEN PAID AND UNPAID LEAVE BANKS

Proposed Section 7-217 establishes that when an employee has both paid and unpaid protected time off available, the employer must provide paid time first, unless the employee specifically requests to draw from the unpaid bank. While this default is reasonable from a worker's perspective, the rule creates new tracking obligations that will be especially challenging for small employers who do not use sophisticated payroll software.

Employers must now maintain and report on multiple distinct leave banks—paid protected time off under Section 20-913(b), unpaid immediately available hours under Section 20-913(k), and paid prenatal leave under Section 20-913(l)—each with different accrual rules, usage rules, and carryover provisions. The pay statement requirements under proposed Section 7-207 require differentiation between paid and unpaid protected time off on every pay period. We strongly recommend that DCWP develop standardized templates and free tracking tools to assist small businesses with these complex recordkeeping requirements.

EXPANDED AUTHORIZED USES REQUIRE CLEARER GUIDANCE

The new authorized uses of protected time off—particularly "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"—are significantly broader than the original sick time and safe time categories. Employers need practical guidance on the scope of these categories. For example:

Childcare: Does this cover routine childcare needs such as school closures, or is it limited to emergency or unanticipated caregiving situations? How does this interact with existing employer childcare policies?

Subsistence benefits and housing: What constitutes "other actions related to subsistence benefits or housing"? Does this include apartment searching, meetings with landlords, or applications for public benefits? The breadth of this category makes compliance planning difficult.

Public disaster: Who determines when a "public disaster" is occurring, and what is the temporal scope of the authorized leave? Employers need clarity on triggering events and duration.

Without detailed interpretive guidance, employers risk inadvertent violations, and employees may be unsure of their own rights. We urge DCWP to publish comprehensive FAQs and scenario-based guidance in advance of the effective date.

ENFORCEMENT CONCERNS

The Chamber has long advocated for a compliance-first approach to enforcement. Our extensive analysis of DCWP enforcement patterns has shown that penalty-driven enforcement disproportionately impacts the smallest businesses—the very businesses least likely to have dedicated HR or legal counsel and most likely to make inadvertent compliance errors.

Proposed Section 7-213 maintains a structure in which the failure to maintain a written policy *and* the failure to maintain adequate records creates a "reasonable inference" that the employer has an unlawful policy or practice. This inference can trigger $500-per-employee-per-year penalties across the entire workforce. For an employer with 20 employees and a two-year record-keeping lapse, this means potential liability of $20,000—a sum that could be existential for a small business.

We respectfully ask DCWP to consider the following enforcement modifications:

First, establish a mandatory cure period for first-time, non-willful violations, during which employers can come into compliance without financial penalty.

Second, scale penalties proportionally to employer size, recognizing that a flat $500-per-employee penalty has vastly different impacts on a five-person shop versus a 500-person corporation.

Third, invest in proactive education and outreach—particularly in multiple languages—before ramping up enforcement of these significantly expanded requirements.

RECOMMENDATIONS

In summary, the Manhattan Chamber of Commerce offers the following recommendations to improve these proposed rules:

1. Extended transition period. Provide a minimum 12-month grace period from the effective date of these rules for employers to update policies, systems, and documentation to reflect the new "protected time off" framework, during which good-faith compliance efforts are recognized.

2. Free compliance tools. Develop and distribute free, multilingual compliance templates, leave-tracking tools, and model written policies to help small businesses meet the new recordkeeping and pay statement requirements.

3. Interpretive guidance. Publish detailed, scenario-based FAQs addressing the new categories of authorized use—childcare, housing and subsistence benefits, public disaster, and workplace violence—well in advance of enforcement.

4. Cure-period protections. Incorporate a mandatory cure period for first-time, non-willful violations to protect small employers from disproportionate penalties while still ensuring employee rights are upheld.

5. Scaled enforcement. Adopt an enforcement framework that scales penalties proportionally to employer size and differentiates between willful noncompliance and inadvertent errors.

CONCLUSION

The Manhattan Chamber of Commerce is committed to supporting both workers and the businesses that employ them. We believe that strong labor protections and a thriving small business ecosystem are not mutually exclusive—but achieving both requires thoughtful implementation, clear guidance, and an enforcement posture that prioritizes education and compliance assistance over punitive action.

We urge DCWP to take the concerns raised in this testimony seriously and to work collaboratively with the business community to ensure that these expanded protections are implemented in a way that achieves their intended goals without imposing undue hardship on the small businesses that are the lifeblood of Manhattan's neighborhoods.

Thank you for the opportunity to comment on these proposed rules. We look forward to continued engagement on this important issue.

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March
Two
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The Honorable Samuel A.A. Levine
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Re: Comments on the Proposed Rule to Implement Changes to the Earned Safe and Sick Time Act

Dear Commissioner Levine:

On behalf of our New York City members, GNYHA appreciates the opportunity to provide comments on the proposed amendments to the rules related to the Earned Safe and Sick Time Act (ESSTA), which was recently amended by Local Law 145 of 2025. Our comments are limited to a request for the Department of Consumer and Worker Protection (DCWP) to clarify language on the protections for workers during public disasters.

Hospitals are an integral part of New York City's critical infrastructure, responding on the frontlines to everything from weather-related events to terrorist attacks. They are expected to operate 24/7 during public disasters, and they meet this challenge on an all-too-often basis.

It is critically important that adequate staff are available to ensure uninterrupted hospital operations, including during public disasters. This is why hospital employees are typically designated as "essential workers" and exempted from travel bans imposed by both New York City and New York State during declared emergencies.

As currently drafted, the proposed rules briefly summarize the reasons for which protected time off is available, including "to respond to a public disaster." This wording is overly broad and could lead to the mistaken conclusion that essential workers are eligible for protected leave under ESSTA whenever the government declares a disaster, which is not what the law provides and could pose a risk to patient care and public health. Thus, we are requesting that DCWP add language to the rules to reflect the definition of that phrase as found in Local Law 145 of 2025.

The text of the law that provides protected leave during a public disaster reads as follows:

> *(c) closure of such employee's place of business by order of a public official due to a public health emergency, a public disaster, or such employee's need to care for a child whose school or childcare provider [has been] closed or restricted in-person operations by order of public official due to a public health emergency or public disaster; or*
> *(d) direction by a public official to remain indoors or avoid travel during a public disaster which prevents such employee from reporting to their work location.*

For hospital employees, who – again – are routinely and appropriately exempted from travel bans, the ESSTA protections tied to the new public disaster category apply only when the employee needs to care for a child whose school or childcare provider has closed or is offering limited in-person operations due to a public health emergency or public disaster. The proposed rule suggests a broader standard.

Our concerns are not theoretical. On February 19, the City posted FAQs and a Notice ahead of Local Law 145 becoming effective on February 22. The City guidance, rather than incorporating the more refined provisions from Local Law 145, states that any absence due to a declared emergency is considered protected time off. The guidance does not mention there may be exceptions for essential workers. Just one day later, on February 23, the Mayor declared a state of emergency for a snowstorm with an associated travel ban. We have heard from members that there was some confusion about the applicability of the ESSTA requirements to essential staff due to hospitals' obligation to maintain adequate staffing for operations and emergency response.

We urge DCWP to more clearly define the circumstances in which the public disaster provision applies, in accordance with the statutory language. Such a clarification would mitigate the risk of hospitals and other medical facilities experiencing staffing shortages if essential workers misunderstand when ESSTA protections apply. Such confusion could weaken emergency response efforts and compromise patient care when the health care system already faces significant strain. Clear guidance would also be useful to other categories of essential workers who play critical roles in protecting public health and safety.

Thank you again for the opportunity to comment on the proposed rules. We appreciate your thoughtful approach to the implementation of protected leave under ESSTA.

Please contact me (lalfredo@gnyha.org), Chatodd Floyd (cfloyd@gnyha.org), or David Labdon (dlabdon@gnyha.org) with any questions or concerns.

Sincerely,

Laura Alfredo
Executive Vice President,
Legal, Regulatory, and Professional Affairs & General Counsel

RETAIL COUNCIL OF NEW YORK STATE
RESULTS FOR TODAY'S RETAILERS

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March 2, 2026

New York City Department of Consumer and Worker Protection
Consumer Services Division
42 Broadway, 9th Floor
New York, NY 10004

RE: Protected Time Off Under the "Earned Safe and Sick Time Act"

Dear Commissioner Levine:

The Retail Council of New York State is the state's leading trade group for the retail industry, representing member stores in New York City and across the state, ranging from the smallest independent merchants to national and international brands.

Thank you for providing an opportunity to comment on the proposed rules related to protected time off under the "Earned Safe and Sick Time Act."

We respectfully request that the Department of Consumer and Worker Protection (DCWP) include a phased implementation of the requirements and, specifically, provide employers with a 90-day grace period to update systems and policies prior to enforcement. This will allow for training and system modification without compromising employee rights.

On behalf of thousands of stores throughout New York, we encourage DCWP to consider the aforementioned request as you finalize the rule. If we can be of any assistance or provide clarification regarding this recommendation, please contact us at (518) 465-3580.

Respectfully submitted,

Kelsey Dorado Bobersky
Director of State and Local Government Relations
Retail Council of New York State

From: Michelli Rivera
To: rulecomments (DCWP)
Cc: Jessica Denison
Subject: [EXTERNAL] Comments to the Earned Safe and Sick Time Act rules
Date: Monday, March 2, 2026 10:58:53 AM
Attachments: image001.png

Department of Consumer and Worker Protection:

This email is submitted in response to the proposed amendments to the Earned Safe and Sick Time Act (Act) rules. We respectfully offer the following comments for the Department's consideration:

1. Leave Information
We encourage the Department to consider adding clarification to 7-206(a) to specify that for any protected time off, employers cannot require disclosure of ***detailed*** information like confidential medical information but can at a minimum ask about the ***general*** nature of leave, sufficient enough for employers to educate employees on the leave options they may have available. For example, if leave is due to a serious health condition, that FMLA might also be available.

2. Pay Statement Requirements
We request clarification regarding pay stub requirements where an employer uses an existing paid time off (PTO) policy to satisfy paid protected time obligations. For instance, if an employer provides employees with 150 hours of PTO at the beginning of the year that may be used for sick leave or paid prenatal leave purposes, how should this be reflected on employee pay statements? Clear guidance would assist employers in ensuring compliance with pay transparency requirements.

3. Notice Requirements at Commencement of Employment
The proposed rules indicate that employers must maintain a written protected time off and paid prenatal leave policy and provide it to employees at the start of employment. We seek clarification as to whether employers must also provide the official City notice at hire, or whether providing a compliant written policy that summarizes employee rights is sufficient. We note that employees would also receive the official City notice through workplace posting requirements.

4. "Single Writing" Requirement
We request clarification regarding the requirement that the written sick leave and paid

prenatal leave policy be maintained in "a single writing." Specifically, may an employer maintain a single sick leave policy and a ***separate*** paid prenatal leave policy?

5. Posting Requirements for Employers Without a Physical NYC Worksite
We suggest the Department clarify that employers without a physical workplace in New York City may satisfy posting obligations by distributing the required poster electronically to employees. While the proposed rules reference electronic delivery of new hire notices and pay statement information, they do not specifically address electronic distribution of the workplace poster.

We believe that clarification in these areas would significantly assist employers in understanding and complying with their obligations under the Act.

The above should sufficiently capture our concerns. We don't intend to speak at the hearing. However, please feel free to reach out if you have any questions.

Thank you for your consideration.

Michelli Rivera, Esq.
Compliance Consultant
Alliant Employee Benefits

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[Eastern Time Zone]

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From: Delia Lynch
To: rulecomments (DCWP)
Subject: [EXTERNAL] Fw: RUMC
Date: Monday, March 2, 2026 11:55:51 AM

Good Afternoon,

We would like to raise a concern about how the NYC protected time off, applies to essential workers during public emergencies or disasters.

For example, during the severe weather on February 22 and 23, healthcare facilities in our area faced real challenges. Hospitals and other 24/7 healthcare providers must remain open during emergencies and are critical to the safety of the community, especially when there is a state of emergency or similar.

When all essential employees are able to use protected time off during a declared emergency, it can create serious staffing shortages for facilities that must stay open. In healthcare settings, this can affect patient care and the community's ability to respond to the emergency itself.

We respectfully ask that special consideration be given to employers that provide essential services or clarification on how these reasons for use of protected time off may apply to essential workers during such emergency events. Policies should recognize the need to support employees while also ensuring that critical services, like healthcare, can continue operating during emergencies.

We appreciate your time and consideration of this concern.

Delia Lynch

From: Delia Lynch [redacted]
Sent: Monday, March 2, 2026 11:29 AM
To: rulecomments@dcwp.nyc.gov <rulecomments@dcwp.nyc.gov>
Subject: RUMC

The allowed reasons for leave now include **public emergencies or "public disasters"** as defined by the law — including when a government official declares an emergency and **orders people to stay home or avoid travel**. Does this apply to

essential workers, RNs and Doctors? The storm that took place on 2/22 -2/23 with the new rule in place allowed for 126 RNs to call out this left our hospital extermly short staffed.

Proprietary - This communication is secured and monitored in accordance with the policies of Richmond University Medical Center.

From: Nivritha Ketty
To: rulecomments (DCWP)
Subject: [EXTERNAL] NYC ESSTA - Pro posed Rules
Date: Friday, February 27, 2026 8:19:49 PM
Attachments: 20thnfcreduced_649a06bc-b577-4ec9-b5f2-96c800ee0d51.png

To whom it may concern:
Below are some proposed rules to address some of the ambiguities we are seeing with applying the amendments:
1. Rule regarding how unpaid 32 hour bank time can be used for partial day absences for exempt employees without violating salary basis requirement: To reconcile use of unpaid time with salary basis requirement, Rule should provide that employers may require exempt employees to use unpaid 32 hour bank time in full day increments and if exempt employee regularly works less than 8 hours a day, the employer may satisfy the 32 hour unpaid back requirement by providing 4 full days of unpaid leave that may be used upon hire for any of the covered reasons regardless of whether 4 full days is less than 32 hours.
2. Paid Prenatal Leave Bank/Accruals: Rule should make clear that employers do not need to establish paid prenatal leave banks for all employees. Rather, they only need to show accruals and amount available for use once an eligible employee uses the paid prenatal leave and only in pay periods when the employee uses such leave.
3. Rule regarding timing for use of paid prenatal leave: Rule should specify that employer does not have to retroactively grant paid prenatal leave when employee did not advise of the desire to use paid prenatal leave or that leave was for a covered reason at the time leave was taken.

Thank you,
Nivritha Ketty
[redacted]

Nivritha Ketty, Esq. | Partner

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From: Gabe Fenigsohn
To: rulecomments (DCWP)
Subject: [EXTERNAL] Public Comment: Worker Impact of Proposed ESSTA rules for CBA employees
Date: Friday, February 27, 2026 2:19:35 PM

Dear DCWP,

I am submitting this comment on the proposed rules implementing the recent amendments to the Earned Safe and Sick Time Act. I am a healthcare worker at a large New York City hospital system covered by a collective bargaining agreement. I write in my individual capacity to offer a frontline perspective on three issues the final rules should address. Thank you so much for considering these serious issues impacting so many of my own coworkers, and workers across New York City.

1. Pay Statement Transparency for CBA Employees

The proposed rules require employers to display protected time off balances on pay statements, distinguishing between paid and unpaid time. However, for employees covered by collective bargaining agreements where the employer has waived ESSTA under the comparable benefit provision, the rules do not require clearly enough that employers must display how much of an employee's sick leave has been used for protected purposes versus non-protected purposes.

At my workplace for example, the employer draws their own distinction between "Statutory Sick Time" (protected, up to the hours required by the law) and "Non-Statutory Sick Time" (subject to strict attendance-based discipline, regardless of provider notes or legitimate need). Yet employees have no way of knowing where they stand relative to this threshold on any given day. The information does not appear on paystubs. Workers only learn they have crossed from "protected" to "non-protected" status when they receive discipline for taking their own sick hours, with such discipline occuring based on occurrence policies after "Statutory" time is depleted.

The final rules should clarify that employers who distinguish between protected and non-protected leave — including those operating under CBA waivers — must display both categories and their balances on each pay statement. Employers complying with the law already separately track and display paid prenatal leave balances on paystubs, demonstrating the technical capability to do the same for other protected leave categories.

2. Prenatal Leave Default Designation

The amended ESSTA states that an employer must provide paid prenatal leave when an employee communicates that the employee needs time off for healthcare services during or related to their pregnancy. This places an affirmative obligation on the employer to apply the prenatal leave designation when the nature of the absence is communicated.

However, some employers' updated policies require the employee to affirmatively state that the absence is for a qualifying reason under the prenatal leave law and to then identify which leave bank they wish to use. In practice, this means a pregnant worker who tells her manager she has a pregnancy-related doctor's appointment may have the absence coded as regular sick time rather than prenatal leave, simply because the worker did not use the specific language the employer's policy demands.

The final rules should please more clearly explain that when an employer has reason to know an absence qualifies as paid prenatal leave, based on information the employee has communicated, the employer must apply the prenatal leave designation by default, unless the employee affirmatively requests to use a different leave bank. The burden should be on the employer to correctly categorize leave, not on the worker to navigate technical distinctions between leave banks.

3. "Readily Accessible" Electronic Systems

The proposed rules permit employers to satisfy pay statement requirements through electronic systems that are "readily accessible" to employees outside the workplace. Some employers use internal systems that require complex VPN access, managerial approval, and multi-step IT setup processes to access remotely. As a result, very few employees in real life actually have remote access to their leave balances. The final rules should please define "readily accessible" to mean accessible without requiring employer approval, specialized software, or IT intervention — for example, through a standard web browser.

Thank you for the opportunity to comment. Workers are desperately in need of clear, accessible information about their protected leave balances to exercise their rights under the law and make these historic safeguards a reality for everyday workers in New York City.

Respectfully,
A New York City Healthcare Worker

From: Chilco, Sebastian
To: rulecomments (DCWP)
Cc: Fuchs, Stephen A.; Gomez-Sanchez, Daniel; Mishra, Devjani; Nair, Sanjay; Mills-Gallan, Stephanie
Subject: [EXTERNAL] Submission of Public Comment re: Proposed Rules on Protected Time Off Under the Earned Safe and Sick Time Act
Date: Monday, March 2, 2026 5:10:35 PM

Dear New York City Department of Consumer and Worker Protection:

We are attorneys at Littler Mendelson, the world's largest employment and labor law practice representing management, and members of the firm's Paid Leave Subgroup which focuses on advising employers of all sizes on federal, state, and local paid leave requirements, such as New York City's Earned Safe and Sick Time Act (ESSTA). When the subgroup was formed, there were a handful of laws, mostly at the local level. Since then, however, the number of paid leave laws has increased exponentially. Accordingly, attorneys like us bring to the table a wealth of legal, historical, and practical knowledge and perspective when it comes to job-protected paid leave.

After reviewing the Proposed Protected Time Off Under the Earned Safe and Sick Time Act Rules, we have prepared the below comments.

Thank you for considering the following.

Stephen Fuchs (Shareholder – New York City, NY)
Daniel Gomez-Sanchez (Shareholder – Long Island, NY)
Devjani Mishra (Shareholder – New York City, NY)
Sanjay Nair (Shareholder – Long Island, NY)
Stephanie Mills-Gallan (Shareholder – Milwaukee, WI)
Sebastian Chilco (Attorney – San Francisco, CA)

Reduce Inequities Between Nonexempt and Exempt Employees by Resolving Conflict Created by § 7-204 (Minimum Increments and Fixed Intervals for the Use of Protected Time Off) & § 7-217 (Requirement to Provide 32 Immediately Available Hours of Protected Time Off)

The ESSTA now requires each year 32 hours of unpaid safe/sick time "[i]n addition to" paid safe/sick time the ordinance already required. For employees considered "nonexempt" under wage and hour laws, differentiating "paid" and "unpaid" time is comparatively straightforward. For wage and hour purposes, when they work they get paid, and when they do not work they do not get paid. Similarly, for ESSTA purposes, when they use "paid" safe/sick time they get paid, and when they use "unpaid" safe/sick time they do not get paid.

However, the issue becomes significantly more complicated – legally and administratively – for any "exempt" executive, administrative, and/or professional employee subject to the salary basis requirements under federal and/or state law.

According to Merriam-Webster, the definition of "conflict" as a noun includes "a difference that prevents agreement," and its definition as a verb includes "to fail to be in agreement or accord." *See* Conflict, Definition & Meaning - Merriam-Webster.

We believe that, unless further revised, the Department's rules concerning both the minimum increment of use and hierarchy of use could create a "conflict" with the salary basis requirements and with the ESSTA's requirement that employers provide "unpaid" leave.

29 C.F.R. § 641.602(b)(2) provides in relevant part that an employer can deduct such an exempt employee's salary:

> for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder.

For example, if an employer can only establish a maximum initial increment of 4 hours per 7-204(a), and an employee can be required to use 4 hours of leave, but works the remainder of their shift, the "unpaid" leave is converted to "paid" leave because an employer cannot reduce an exempt employee's salary for a partial-day absence. Similarly, if an employee has sufficient paid leave to cover the maximum initial increment but exercises their right to instead use unpaid leave per 7-217(a), a salary reduction cannot occur because, again, this is a partial-day absence.

If, conversely, the Department's rules permitted these exempt employees to only use unpaid leave after they exhausted their paid leave and/or permitted them to only use unpaid leave in

full-day increments, this could significantly reduce the odds of and opportunities for exempt employees to convert what the ESSTA entitles them to – unpaid leave – into something the law does not: paid safe/sick time on top of existing paid safe/sick time. Additionally, this could help produce a less unjust outcome for nonexempt employees who are unable to use the Department's proposed rules in a manner that allows them to convert their unpaid safe/sick time into a paid benefit.

§ 7-207
Notice of Protected Time Off Accruals and Use of Protected Time Off and Paid Prenatal Leave on Pay Statement

For employers electronically complying with the pay statement notice obligation under Administrative Code § 20-919(c), section (b) of 7-207 requires, in part, "electronically alerting the employee each pay period to the availability of the required information."

We request that the Department address whether employers can meet this obligation via one, or a combination of two or more, of the following methods. Each method would notify employees that the required information is always available to them electronically, and would include where they can find the information:

- Annual standalone notice.
- Quarterly standalone notices.
- Monthly standalone notices.
- Workplace posting.
- Intranet posting.
- Written policy required by § 7-211.

§ 7-211
Employer's Written Protected Time Off and Paid Prenatal Leave Policies

The Department is proposing to convert current (c)(3)(v) into (c)(4)(v) and make the following changes (**bold** text added, ~~struck-out~~ text deleted):

> 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.

We believe "or other situation" is an imperfect replacement for "or the personal situation that led the employee to use safe time." There are "other" non-medical reasons an employee can use "sick" time under the law that do not constitute "safe" time, such as:

- "employee's need to care for a child whose school or childcare provider closed or restricted in-person operations by order of public official due to a public health emergency or public disaster;" and
- "direction by a public official to remain indoors or avoid travel during a public disaster which prevents such employee from reporting to their work location."

The reasons behind use of safe/sick leave for these "other" reasons do not involve details of an intimate, personal nature like medical use of "sick" time and/or use of "safe" time.

Accordingly, we suggest that the Department adopt the following alternative language:

> A statement that the employer will not ask the employee to provide details about the medical condition that led the employee to use protected time off for "sick" time reasons or paid prenatal leave, or the personal situation that led the employee to use protected time off for "safe" time reasons, and that any information the employer receives about the employee's such use of 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.

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

Add (c) to Address Reinstatement Obligation of Unpaid Safe/Sick Time if Rehiring Occurs in Same ESSTA Year

As amended, Administrative Code section 20-913(j) provides, in relevant part:

> When there is a separation from employment and the employee is rehired within 6 months of separation by the same employer, previously accrued safe/sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued safe/sick time at any time after such employee is rehired, provided that no

> employer shall be required to reinstate such safe/sick time to the extent the employee was paid for unused accrued safe/sick time prior to separation and the employee agreed to accept such pay for such unused safe/sick time.

It is not clear whether the reinstatement provisions apply to unpaid safe/sick time, given only paid safe/sick time is "accrued." However, there will be instances when an employee separates from, but returns to, employment within the same year an employer uses for ESSTA compliance.

The Department should adopt a regulation specific to this issue. We suggest that the Department adopt the following language:

> (c) If an employee separates from employment but is rehired within the same "calendar year," and during that "calendar year" the employer already made immediately available at the beginning of the "calendar year" 32 hours of unpaid safe/sick time, an employer must only reinstate and make immediately available for the remainder of that "calendar year" any hours of unpaid safe/sick time that remained unused at the time of separation. The employee will not be eligible for a new allotment of unpaid safe/sick time until the beginning of the next "calendar year" after rehire.

Under (b), Allow Wholesale AND Partial Compliance via Paid Leave

The Department is proposing the following:

> An employer may fulfill its obligation to provide unpaid immediately available hours by providing an equivalent amount of paid protected time off.

We urge the Department to not only allow employers to meet *all* their 32-hour unpaid leave obligation via paid leave – in addition to the 40 or 56 hours per year that they already must provide under the ordinance – but to *partially* meet their unpaid leave responsibility.

For example, assuming under the ordinance an employer has an obligation to provide 56 hours of paid safe/sick time per year (so 88 hours of safe/sick time overall per year), if on the first day of employment and each subsequent year the employer makes immediately available:

- 80 hours of paid leave, they must make immediately available 8 hours of unpaid leave;
- 72 hours of paid leave, they must make immediately available 16 hours of unpaid leave;
- 64 hours of paid leave, they must make immediately available 24 hours of unpaid leave.

Designating Absence as Covered Use of Paid Safe/Sick Time Under (a) AND Generally

The Department is proposing, in part, the following language for section (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.

We support not only this *specific* interpretation, but also generally believe that all parties benefit when employers can designate covered absences as job protected *and* paid, so we strongly encourage the Department to also *apply that outcome more broadly* under the ESSTA.

Based on our experience with employers of all sizes from around the country, we share concerns expressed by Oregon's Bureau of Labor & Industries in its FAQ on this issue and want to minimize disputes between employers and employees, particularly when they can be avoided:

> **We provide our employees with 40 hours of PTO each year that may be used for vacation or sick leave. My employee does not want to be paid when he is out sick because he wants to save the time for vacation. Do I have to require the employee to take the day as paid sick time?**
>
> Best practice would be to require the employee to take the day as paid sick time. To do otherwise could lead to problems down the road. But, the law does not mandate that you require employees to take paid sick time. Best practice would be to have the unpaid vacation day discussion once all the employee's sick time has been used, since vacation time is not protected, instead of risking liability for unpaid sick time an employee is otherwise entitled to use.

Numerous legitimate reasons support allowing employers to designate employee-requested covered absences as ESST covered by the law:

- Public Policy: The goal of job-protected paid leave laws is to eliminate the Catch-22 employees face of having to choose between financial and personal / familial wellbeing. Providing pay and job protections further this goal.
- Legal: Minimize disputes that a company *should have known* the employee wanted to

use leave and/or actions taken because job-protected leave was *not* applied to the absence.

- Administrative / Practical: Standardize and establish boundaries for the process, which might lessen disruptions to payroll and leaves management administration. If employers spend less time looking backwards, they will have more time to look forward.
- Certainty: Minimize the chance that an employee asks to designate prior absences retroactively as safe/sick leave after receiving discipline under an attendance policy.
- Employee Relations: Give employees the benefit of the doubt, not only in terms of legal protections but also concerning payment (one might say a double win for employees).

This approach could help alleviate concerns surrounding "a low percentage of employees us[ing] paid sick leave" that the Department identified in its February 2026 report, *Benchmarking for Evaluating Compliance with NYC's Protected Time Off Law*.

Inevitably, there will be situations in which an employer or its representative knows or has a reasonable, good faith belief that the reason an employee is absent is covered under the ordinance. This might include, for example, the following hypothetical scenarios in which an employee does not expressly request to use protected time off:

- Employee phones a hotline, leaving a voicemail saying "I won't be coming into work today because I'm sick;"
- Employee texts supervisor on Monday "husband sick with flu but will be back Tuesday;"
- Employee emails HR, "NYC schools just announced a snow day tomorrow, so I need to watch my kid and can't work."

Designating these types of absences as covered under the ordinance would be akin to "*protocols* for supervisors to report to payroll when an employee calls out for illness, child care, or another protected reason," which the Department identified as a recommendation for "[i]nadequate or unlawful systems for administering sick leave or protected time off policies." It is a *proactive* measure that businesses can take which also mirrors another Department recommendation: "flag situations when an employee did not work a scheduled shift to identify whether this was for a protected time off reason."

In its report, the Department discussed "effectively detect[ing] barriers to compliance." Allowing employers to designate employee-initiated absences as covered under the ordinance, under appropriate circumstances, could help build a bridge to effective compliance.

Sebastian Chilco
Attorney at Law

[redacted]
101 Second Street, Suite 1000, San Francisco, CA 94105
[redacted]

Littler.com
Labor & Employment Law Solutions

From: Damien Archbold
To: rulecomments (DCWP)
Subject: [EXTERNAL] Unable to submit comments via portal
Date: Sunday, March 1, 2026 7:06:20 AM

Hello,

I was unable to submit comments via this portal:

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

Although well designed and convenient, when I clicked 'submit' the comments would not upload.

Can you please include my comments in the public hearing?

If not, can you help with the portal submission?

Kind regards,
Dr Damien Archbold

I am strongly in favor of amending the ESSTA rules as proposed.

As a doctor at a safety net hospital it disturbs me to hear patients often pre-occupied with returning to work, more affected by the anxiety of time off from work due to illness that their healing after surgery.

This seems due to miserly allowances and targeting by employers.

I am a union delegate and observe how my employer Mount Sinai Services prevents doctors from taking sick leave when required, then targets them when they require time for illness or to care for dependents.

This is especially true for newer employees, who will have 32 hours of protected sick time

from this rule change - in practice, new employees attend my workplace while sick due to fear of the employer.

Mount Sinai Services refuses to grant contractual language for paid pre-natal care for pregnant doctors, preferring to dole this out as a favor to certain employees. This is an important tool used to discipline employees and undermine union solidarity.

NYC Health + Hospitals CEO Mitch Katz unilaterally instituted hostile sick leave policy changes last year that pressure my nursing colleagues to attend work while sick, endangering other staff and patients. This is also a union-busting tool that was initiated without negotiation with NYSNA.

The health industry campaign against employees who require time off while sick, or to care for a sick child or family member, or to attend legal proceedings (increasingly common due to lawfare and arbitrary discipline by health employers), seems to be intensifying.

That employers are coordinating to prevent workers from taking sick time should alarm city health officials. The Greater New York Hospital Association, as a cartel of healthcare employers with a long history of anti-union and anti-competitive practices, deserves scrutiny by law enforcement officials.

This rule change, if passed and vigorously enforced, sends a message to workers, employers and the big business lobby that city government will stand by common-sense rules for safe and sick time to keep all New Yorkers safe.

Online comments: 5

- **C. James Robert von Scholz SC**
  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.

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.

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.

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,

/s/ C. James Robert von Scholz
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Dir. Fax. +1.212.590.6136
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cc : File

Comment attachment
DWCP-Enhanced-Benefits-02042026.pdf

Comment added February 4, 2026 11:54am

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Wednesday, February 4, 2026

BY WEBSITE SUBMISSION / NO HARDCOPY SENT:
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(continued on next page)

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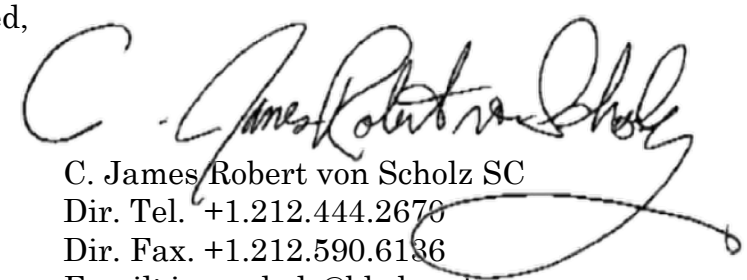

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Email: jvonscholz@bhchambers.com

cc : File

- **Anonymous**
  In a scenario where an employer only offers the statutory number of sick leave hours, i.e., 40 or 56, we need NYC to clarify if in cases where the employer frontloads the 40 or 56 hours and does so on January 1 of every calendar year, must the employer add to that frontloaded 40 or 56 hours any balance of unused sick time carried over from the previous year. For example, in year one, an employee has 10 unused sick hours, which they are allowed to carry over to year two. In year two, on January 1, they are then frontloaded 40 or 56 hours. Is the employer required to add the 10 unused hours from year one to the 40 or 56 hours they frontloaded on January 1 in year two for a total of 50 or 66 hours as of January 1, or since they have frontloaded 40 or 56 hours, they no longer need to add those 10 hours to an employee's available sick leave balance?

  Comment added February 24, 2026 10:14am

- **Anonymous**
  I am wondering why you renamed the law in the Proposed Rules as the Protected Time Off Law and changed the terminology from sick time and safe time when the actual law it titled the Earned Safe and Sick Time Act (N.Y.C. Admin Code § 20-911), the definitions refer to safe time, sick time, and safe/sick time (N.Y.C. Admin Code 20-912), and the reasons for allowable usage are specifically delineated between sick time and safe time (N.Y.C. Admin. Code § 20-914(a)). It seems the new terminology and renaming of the act in DCWP website, postings, and notices confuses rather than clarifies the issue. I would recommend reverting to the terminology used in the text of the law.

  Comment added February 26, 2026 10:42am

- **Dr Damien Archbold**
  I am strongly in favor of amending the ESSTA rules as proposed.

As a doctor at a safety net hospital it disturbs me to hear patients often pre-occupied with returning to work, more affected by the anxiety of time off from work due to illness that their healing after surgery.

This seems due to miserly allowances and targeting by employers.

I am a union delegate and observe how my employer Mount Sinai Services prevents doctors from taking sick leave when required, then targets them when they require time for illness or to care for dependents.

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Comment added March 1, 2026 7:13am

- **Lilly**
  We currently get 96 hrs annually as Sick time (12 days x 8 hrs). Will the Earned Safe and Sick time be ‘added’ to our existing 96 hrs or is it ‘included’ in our existing 96hrs? Thank you.

  Comment added March 2, 2026 10:27am