

Westchester County, NY Employees Are Now Entitled To Paid Sick Leave

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Labor and Employment Alert

3.21.19

Starting on April 10, 2019, under the recently adopted Westchester County, New York Earned Sick Leave Law (WCESLL), employers with five or more employees will be required to provide employees up to 40 hours of paid sick time in a year. Employees of an employer with fewer than five employees will be entitled to 40 hours of unpaid sick time in a year. Domestic workers are provided additional rights under the law.

The following provides a summary of the key requirements of WCESLL:

1. **Notice and Posting Requirements:** At the commencement of employment or within 90 days of the effective date of WCESLL, which is [July 9, 2019](#), whichever is later, employers must provide employees with a copy of WCESLL and written notice of how the law applies to them. Employers must also display a copy of WCESLL and a poster in English, Spanish and any other language deemed appropriate by the County of Westchester, in a conspicuous location.
2. **Employee Eligibility:** Under WCESLL, an "employee" is broadly defined to include "any person employed for hire by an employer in any employment within Westchester County for more than 80 hours in a calendar year who performs work on a full-time or part-time basis . . ." Based on this definition, employers will likely need to comply with WCESLL even if their employees are not based in Westchester County, as it appears that any employee who works 80 hours or more in a calendar year in Westchester will be eligible for sick leave.
3. **Accrual and Carryover:** Eligible employees may accrue sick leave at the commencement of employment or 90 days after WCESLL's effective date, which is [July 9, 2019](#), whichever is later. Eligible employees must accrue a minimum of one hour of sick leave for every 30 hours worked, up to a maximum of 40 hours of sick leave in a given year. Like the New York City Earned Safe and Sick Time Act, in lieu of calculating the accrual of time, employers may alternatively frontload 40 hours of time off each year to meet the accrual requirements. Under WCESLL, "[e]arned sick time that has not been utilized can be carried over to the following year, provided that the maximum amount of sick leave for any given year remains at forty (40) hours."
4. **Use of Time and Notice:** Sick leave may be utilized for multiple reasons, including: an employee's or family member's mental or physical illness, injury or health condition; an employee's or family member's need for diagnosis, care or treatment of a mental or physical illness, injury or health condition; an employee's need for or the care of a family member who needs preventive medical care; the care of a family member when public health authorities have determined that the family member's presence in the community may jeopardize the health of others; or, the closure of the employer's place of business or of a daycare or grade school attended by an employee's child due to a public health emergency.
5. **Notice to Employer Required:** Where an absence is foreseeable, the employee must in good faith attempt to provide advance notice to the employer and make reasonable efforts to schedule the leave in a way that does not unduly disrupt the employer's operations. WCESLL does not address unforeseen absences. Employers that require notice of the need to use sick time must provide a written policy that contains the procedures for the employee to provide notice. WCESLL expressly provides that notice may be provided orally, in writing, by electronic means or any other means acceptable to the employer.
6. **Documentation:** Employers may require that employees who are absent for more than three consecutive days provide reasonable documentation to demonstrate the time has been used for a purpose covered under the law. Employers are prohibited from

requiring documentation that is in violation of HIPAA.

7. **Retaliation:** Retaliation is prohibited and employers may not: interfere with or restrain employees from exercising their rights under WCESLL; count sick time as an absence that may lead to any adverse employment action; or, retaliate or discriminate against any employee for requesting sick time, filing a complaint alleging a violation of WCESLL or providing information to other employees of their rights under WCESLL.
8. **Domestic Workers:** Domestic workers are provided additional rights under WCESLL. For example, all domestic workers employed by an employer, regardless of size, are entitled to earn and use up to 40 hours of earned paid sick time in a year. Domestic workers also accrue sick time under the law at a rate of one hour for every seven days worked, which is in addition to the one day rest period already provided to domestic workers under New York State Law.

The Westchester County Department of Weights and Measures – Consumer Protection (the Department) is charged with enforcing WCESLL. The Department is empowered to investigate and adjudicate complaints, to seek the resolution of disputes and to conduct hearings. The Department may also assess penalties and additional relief that it deems appropriate against employers, such as the amount of unpaid sick time, actual damages, attorneys’ fees and costs and other equitable relief, including back pay and reinstatement. In lieu of these agency procedures, WCESLL permits claims to be filed by employees directly in court no later than one year after the occurrence of the alleged violation.

Employers are encouraged to prepare for WCESLL now. It is recommended that if subject to WCESLL, companies develop the required posters and notices and implement a procedure for tracking employees who work in Westchester County. Employers should also begin to update all sick leave and paid time off policies to comply with the new legal requirements, while ensuring that WCESLL benefits are coordinated with other leave benefits, such as the Family and Medical Leave Act and the New York Paid Family Leave Act.

For questions or guidance on this development or other employment law matters, please contact Scott Casher (914.487.7343; cashers@whiteandwilliams.com), George Morrison (610.782.4911; morrisong@whiteandwilliams.com) or any member of our Labor and Employment Group.

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