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Int. No. 780

By Council Members Nurse, Cabán, Avilés, Sanchez, Hanks, Brooks-Powers, Gutiérrez, Hudson, Hanif, Brewer, Ossé, Ayala, Schulman, Riley, Louis and Feliz

A Local Law to amend the administrative code of the city of New York in relation to aligning the requirements of the Earned Safe and Sick Time Act and the Temporary Schedule Change Act

Be it enacted by the Council as follows:

Section 1. Section 20-912 of the administrative code of the city of New York is amended by adding a definition of “caregiver,” “care recipient,” and “minor child” in alphabetical order to read as follows:

Caregiver. The term “caregiver” has the same meaning as in section 20-1261.

Care recipient. The term “care recipient has the same meaning as in section 20-1261.

Minor Child. The term “minor child” has the same meaning as in section 20-1261.

§ 2. Section 20-914 of the administrative code of the city of New York, as amended by local law number 97 for the year 2020, is amended to read as follows:

§ 20-914 Use of safe/sick time.

a. Sick time.

1. An employee shall be entitled to use sick time for absence from work due to:

(a) such employee’s mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care; or

(b) care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or

(c) closure of such employee’s place of business by order of a public official due to a public health emergency or such employee’s need to care for a child whose school or childcare provider has been closed by order of public official due to a public health emergency.

2. For absence of more than three consecutive work days for sick time, an employer may require reasonable documentation that the use of sick time was authorized by this subdivision. For sick time used pursuant to this subdivision, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee’s or the employee’s family member’s injury, illness or condition, except as required by law. Where a health care provider charges an employee a fee for the provision of documentation requested by their employer, such employer shall reimburse the employee for such fee.

b. Safe time.

1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons:

(a) when the employee or employee's family member has been the victim of domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a family offense matter, sexual offense, stalking or human trafficking:

[(a)] (1) to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

[(b)] (2) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking or human trafficking;

[(c)] (3) to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

[(d)] (4) to file a complaint or domestic incident report with law enforcement;

[(e)] (5) to meet with a district attorney's office;

[(f)] (6) to enroll children in a new school; or

[(g)] (7) to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

(b) When the employee is a caregiver for a minor child or care recipient, to provide care to the minor child or care recipient; or

(c) to attend a legal proceeding or hearing related to subsistence benefits or housing to which the employee, a family member, or the employee's care recipient is a party.

2. For an absence of more than three consecutive work days for safe time, an employer may require reasonable documentation that the use of safe time was authorized by this subdivision. For safe time used

pursuant to this subdivision, documentation signed by an employee, agent, or volunteer of a [victim] services organization, school or care provider[,] an attorney or other court personnel[,] a member of the clergy, or a medical or other professional service provider [from whom the employee of that employee's family member has sought assistance in addressing domestic violence, family offense matters, sex offenses, stalking, or human trafficking and their effects]; a police or court record; or a notarized letter from the employee explaining the need for such time shall be considered reasonable documentation and an employer shall not require that such documentation specify the details of the underlying need for the safe time [domestic violence, family offense matter, sexual offense, stalking or human trafficking]. An employer shall reimburse an employee for all reasonable costs or expenses incurred for the purpose of obtaining such documentation for an employer.

c. An employer may require reasonable notice of the need of use safe/sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such safe/sick time, not to exceed seven days prior to the date such safe/sick time is to begin. Where such need is not foreseeable, an employer may require an employee to provide notice of the need for the use of safe/sick time as soon as practicable.

d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used safe/sick time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking safe/sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing time.

f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses safe/sick time provided pursuant to this chapter for purposes other than those described in this section.

§ 3. Section 20-915 of the administrative code of the city of New York, as amended by local law number 97 for the year 2020, is amended to read as follows:

§ 20-915 Changing schedule.

a. An employee may request a temporary change in schedule pursuant to subdivision b of section 20-1262 of chapter 12 instead of using safe/sick time. Such a temporary change may be made upon [Upon] mutual consent of the employee and the employer[, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using safe/sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term].

b. An employer shall not require [such] an employee to work additional hours to make up for the [original] hours for which such employee uses safe/sick time [was absent] or to search for or find a replacement employee to cover the hours during which the employee uses safe/sick time [is absent pursuant to this section].

c. If [such] an employer and employee agree to a temporary change, and the employee's work [works additional hours, and such] hours are fewer than the number of hours such employee was originally scheduled to work, then such employee shall be able to use any available safe/sick time [provided pursuant to this chapter] for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

§ 4. Section 20-1261 of the administrative code of the city of New York, as amended by local law number 69 for the year 2018, is amended to read as follows:

[Business day. The term “business day” means any 24-hour period when an employer requires employees to work at any time.]

Caregiver. The term “caregiver” means a person who provides direct and ongoing care for a minor child or care recipient.

Care recipient. The term “care recipient” means a person with a disability who (i) is a family member or a person who resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the

needs of daily living.

Minor child. The term “minor child” means a child under the age of 18.

[Personal event. The term “personal event” means (i) the need for a caregiver to provide care to a minor child or care recipient; (ii) an employee’s need to attend a legal proceeding or hearing for subsistence benefits to which the employee, a family member or the employee’s care recipient is a party; or (iii) any circumstance that would constitute a basis for permissible use of safe time or sick time as set forth in section 20-914.]

Unpaid safe/sick time. The term “unpaid safe/sick time” means unpaid time off that is provided by an employer to an employee that can be used for the purposes described in section 20-914.

b. For purposes of this subchapter, the following terms have the same meaning as those set forth in section 20-912: employee, employer, calendar year, child, family member and [paid] safe/sick time.

§ 5. Section 20-1262 of the administrative code of the city of New York, as amended by local law number 80 for the year 2020, is amended to read as follows:

§ 20-1262 Required [temporary changes] unpaid safe/sick time and [other requests for] right to request temporary changes to a work schedule.

a. An employer shall provide an employee with a minimum of 16 hours of unpaid safe/sick time upon hire and on the first day of each calendar year. Any unpaid safe/sick time under this subchapter that is not used before the end of the calendar year shall not carry over to the following calendar year. An employer shall provide unpaid safe/sick time under this subchapter in addition to any safe/sick time the employer must provide under chapter 8 of this title. An employer shall not require an employee to use or exhaust unpaid safe/sick time under this subchapter before the employee uses safe/sick time accrued under chapter 8 of this title. An employee shall be entitled to use unpaid safe/sick time under this subchapter for the same purposes, and subject to the same rights and limitations, as those set forth in subdivision g of section 20-913, section 20-914, and section 20-915, and any rules promulgated thereunder. The provisions of sections 20-916, 20-917, 20-918, 20-921 and 20-922 are incorporated by reference into this subchapter. [An employer shall grant an employee’s

request for a temporary change to the employees' work schedule relating to a personal event in accordance with the following provisions, with a temporary change meaning a limited alteration in the hours or times that or locations where an employee is expected to work, including, but not limited to, using paid time off, working remotely, swapping or shifting work hours and using short-term unpaid leave:

1. On request, the employer must grant a request for a temporary change to the employee's work schedule under this section two times in a calendar year for up to one business day per request. The employer may permit the employee to use two business days for one request, in which case the employer need not grant another request.

2. An employee who requests such a change:

(a) Shall notify such employee's employer or direct supervisor as soon as the employee becomes aware of the need for a temporary change to the work schedule and shall inform the employer or supervisor that the change is due to a personal event;

(b) Shall make a proposal for the temporary change to the work schedule, unless the employee seeks to leave without pay; and

(c) Need not put the initial request in writing, but as soon as is practicable, and no later than the second business day after the employee returns to work following the conclusion of the temporary change to the work schedule, the employee must submit the request in writing, indicating the date for which the change was requested and that it was due to the employee's personal event. The employer may require that such request be submitted in electronic form in employees of the employer commonly use such electronic form to request and manage leave and schedule changes. If the employee fails to submit the written request, the employer's obligation to respond in writing pursuant to paragraph 3 of this subdivision is waived.

3. An employer who received such an initial request shall respond immediately, but need not put such initial response in writing. As soon as practicable, and no later than 14 days after the employee submits the request in writing, the employer shall provide a written response, which may be in electronic form if such form

is easily accessible to the employee. An employer's written response shall include:

(a) Whether the employer will agree to the temporary change to the work schedule in the manner requested by the employee, or will provide the temporary change to the work schedule as leave without pay, which does not constitute a denial;

(b) If the employer denies the request for a temporary change to the work schedule, an explanation for the denial; and

(c) How many requests and how many business days pursuant to this subchapter the employee has left in the calendar year after taking into account the employer's decision contained in the written response.

4. An employer may deny a request for a temporary change to the employee's work schedule relating to a personal event only in the employee has already exhausted the two allotted requests in the calendar year pursuant to paragraph 1 of subdivision a of this section or if an exemption set forth in section 20-1263 applies.]

b. An employee may request, and in doing so is protected by the provisions of [subchapter 1 of this chapter] section 20-1204, and an employer may grant or deny, a temporary change to [a] the employee's work schedule. A temporary change means a limited alternation in the dates, hours, times, or locations where an employee is expected to work, including, but not limited to, using paid or unpaid time off, working remotely, swapping shifts with another employee, or shifting work hours to earlier or later in the work week or workday. An employer is not required to agree to an employee's requested temporary change, but the employer must respond to the employee's request as soon as practicable. An employer may propose an alternative temporary change, provided that the employee is not required to accept such alternative temporary change. [other than the temporary changes an employer is required to grant under subdivision a of this section. An employee request for such other change to a work schedule and an employer response to such a request shall follow the procedure in paragraphs 2 and 3 of subdivision a of this section to the extent applicable and as set forth in the rules promulgated by the commissioner.

c. 1.] An employee need not use [leave accrued] unpaid safe/sick time under this subchapter or safe/sick

time under chapter 8 of this title before requesting schedule changes under this subchapter.

[2. Unpaid leave granted for a personal event pursuant to this subchapter does not count toward an employer's obligation to grant leave under chapter 8 of this title.

3. Leave granted under chapter 8 of this title does not count toward an employer's obligation to grant leave under this section.

4.] c. Nothing in this subchapter affects and employer's obligation to provide a reasonable accommodation [in the form of a change to a work schedule required] pursuant to other laws or regulations or to otherwise comply with the requirements of other laws or regulations, including, but not limited to, those requirements contained in title 8.

§ 6. Section 20-1263 of the administrative code of the city of New York, as added by local law number 69 for the year 2018, is amended to read as follows:

§ 20-1263 Exemptions. [This] The provisions of this subchapter [does] do not:

a. Apply to any employee who:

1. Is covered by a valid collective bargaining agreement if such agreement (i) expressly waives the provisions of this subchapter [and] (ii) addresses temporary changes to work schedules, and (iii) provides for comparable or superior benefit in the form of unpaid or paid time off;

2. [Has been employed by the employer for fewer than 120 days;

3.] Is employed by any employer whose primary business for which that employee works is the development, creation or distribution of theatrical motion pictures, televised motion pictures, television programs or live entertainment presentations, except for an employee whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers and except for an employee whose primary duty is performing routine mental, manual, mechanical or physical work in connection with the care or maintenance of an existing building or location used by the employer; or

[4.] 3. Works fewer than 80 hours in the city in a calendar year.

b. Preempt, limit or otherwise affect the applicability of any provisions of any other law, regulation, requirement, policy or standard, other than a collective bargaining agreement, that provides comparable or superior benefits for employees to those required herein.

§ 7. This local law takes effect 120 days after becoming law.

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