Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/dca. The Law and Rules are current as of July 2017.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 8: EARNED SICK TIME ACT

§ 20-911. Short title.

This chapter shall be known and may be cited as the "Earned Sick Time Act."

§ 20-912. Definitions.

When used in this chapter, the following terms shall be defined as follows:

a. "Calendar year" shall mean a regular and consecutive twelve month period, as determined by an employer.

b. "Chain business" shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least five.

c. "Child" shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

d. "Domestic partner" shall mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

e. "Domestic worker" shall mean any "domestic worker" as defined in section 2(16) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis.

f. "Employee" shall mean any "employee" as defined in section 190(2) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

g. "Employer" shall mean any "employer" as defined in section 190(3) of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of

the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

h. "Family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner.

i. "Health care provider" shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

j. "Hourly professional employee" shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

k. "Paid sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter and is compensated at the same rate as the employee earns from his or her employment at the time the employee uses such time, except that an employee who volunteers or agrees to work hours in addition to his or her normal schedule will not receive more in paid sick time compensation than his or her regular hourly wage if such employee is not able to work the hours for which he or she has volunteered or agreed even if the reason for such inability to work is one of the reasons in section 20-914 of this chapter. In no case shall an employer be required to pay more to an employee for paid sick time than the employee's regular rate of pay at the time the employee uses such paid sick time, except that in no case shall the paid sick time hourly rate be less than the hourly rate provided in section 652(1) of the labor law.

l. "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

m. "Public disaster" shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York.

n. "Public health emergency" shall mean a declaration made by the commissioner of health and mental hygiene pursuant to section 3.01(d) of the New York city health code or by the mayor pursuant to section 24 of the executive law.

o. "Public service commission" shall mean the public service commission established by section 4 of the public service law.

p. "Retaliation" shall mean any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

q. "Sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

r. “Spouse” shall mean a person to whom an employee is legally married under the laws of the state of New York.
s. “Department” shall mean such office or agency as the mayor shall designate pursuant to section 20-a of the charter.
t. “Grandchild” shall mean a child of an employee’s child.
u. “Grandparent” shall mean a parent of an employee’s parent.
v. “Sibling” shall mean an employee’s brother or sister, including half-siblings, step-siblings and siblings related through adoption.
w. “Commissioner” shall mean the head of such office or agency as the mayor shall designate pursuant to section 20-a of the charter.

§ 20-913. Right to sick time; accrual.

a. All employees have the right to sick time pursuant to this chapter.
   1. All employers that employ five or more employees and all employers of one or more domestic workers shall provide paid sick time to their employees in accordance with the provisions of this chapter.
   2. All employees not entitled to paid sick time pursuant to this chapter shall be entitled to unpaid sick time in accordance with the provisions of this chapter.
b. All employers shall provide a minimum of one hour of sick time for every thirty hours worked by an employee, other than a domestic worker who shall accrue sick time pursuant to paragraph 2 of subdivision d of this section. Employers shall not be required under this chapter to provide more than forty hours of sick time for an employee in a calendar year. For purposes of this subdivision, any paid days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law shall count toward such forty hours. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of sick time at a faster rate or use of sick time at an earlier date than this chapter requires.
c. An employer required to provide paid sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to section 161(1) of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, is not required to provide additional paid sick time for such employee whether or not such employee chooses to use such leave for the purposes included in subdivision a of section 20-914 of this chapter. An employer required to provide unpaid sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, is not required to provide additional unpaid sick time for such employee whether or not such employee chooses to use such leave for the purposes set forth in subdivision a of section 20-914 of this chapter.
d. 1. For an employee other than a domestic worker, sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of this local law, whichever is later, and an employee shall be entitled to begin using sick time on the one hundred twentieth calendar day following commencement of his or her employment or on the one hundred twentieth calendar day following the effective date of this local law, whichever is later. After the one hundred twentieth calendar day of employment or after the one hundred twentieth calendar day following the effective date of this local law, whichever is later, such employee may use sick time as it is accrued.
   2. In addition to the paid day or days of rest to which a domestic worker is entitled pursuant

to section 161(1) of the labor law, such domestic worker shall also be entitled to two days of paid sick time as of the date that such domestic worker is entitled to such paid day or days of rest and annually thereafter, provided that notwithstanding any provision of this chapter to the contrary, such two days of paid sick time shall be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of section 161(1) of the labor law.

e. Employees who are not covered by the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of sick time accrual unless their regular work week is less than forty hours, in which case sick time accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under section 190(2) of the labor law, and (iv) hourly professional employees.

g. Employees shall determine how much earned sick time they need to use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day.

h. Except for domestic workers, up to forty hours of unused sick time as provided pursuant to this chapter shall be carried over to the following calendar year; provided that no employer shall be required to (i) allow the use of more than forty hours of sick time in a calendar year or (ii) carry over unused paid sick time if the employee is paid for any unused sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of such year.

i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued sick time that has not been used.

j. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all sick time accrued at the prior division, entity or location and is entitled to retain or use all sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such sick time to the extent the employee was paid for unused accrued sick time prior to separation and the employee agreed to accept such pay for such unused sick time.

§ 20-914. Use of sick time.

a. An employee shall be entitled to use sick time for absence from work due to:
   1. 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
   2. 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
   3. 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 a public official due to a public health emergency.

b. An employer may require reasonable notice of the need to use sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such sick time, not to exceed seven days prior to the date such 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 sick time as soon as practicable.
c. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of sick time was authorized by subdivision a of this section. For sick time used pursuant to paragraphs 1 and 2 of subdivision a of this section, 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.
d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used sick time pursuant to this section.
e. An employer shall not require an employee, as a condition of taking sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing sick 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 sick time provided pursuant to this chapter for purposes other than those described in this section.

§ 20-915. Changing schedule.

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 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. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee 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 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.

§ 20-916. Collective bargaining agreements.

a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, sick time, and holiday and Sunday time pay at premium rates.
b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

§ 20-917. Public disasters.

In the event of a public disaster, the mayor may, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service

commission.

§ 20-918. Retaliation and interference prohibited.

No employer shall engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or interfere with any investigation, proceeding or hearing pursuant to this chapter. The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter shall include, but not be limited to, the right to request and use sick time, file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of this chapter, or inform any person of his or her potential rights under this chapter.

§ 20-919. Notice of rights.

a. An employer shall provide an employee either at the commencement of employment or within thirty days of the effective date of this section, whichever is later, with written notice of such employee's right to sick time pursuant to this chapter, including the accrual and use of sick time, the calendar year of the employer, and the right to be free from retaliation and to bring a complaint to the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.
b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.
c. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 20-920. Employer records.

Employers shall retain records documenting such employer's compliance with the requirements of this chapter for a period of three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-921. Confidentiality and nondisclosure.

No person or entity may require the disclosure of details relating to an employee's or his or her family member's medical condition as a condition of providing sick time under this chapter. Health information about an employee or an employee's family member obtained solely for the purposes of utilizing sick time pursuant to this chapter shall be treated as confidential and shall not be disclosed except by the affected employee, with the permission of the affected employee or as required by law.

§ 20-922. Encouragement of more generous policies; no effect on more generous policies.

a. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a sick time policy more generous than that which is required herein.
b. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.
c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding sick time as provided pursuant to federal, state or city law.

§ 20-923. Other legal requirements.

a. This chapter provides minimum requirements pertaining to sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees.

b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

§ 20-924. Enforcement and penalties.

a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. Within thirty days of written notification of a complaint by the department, the person or entity identified in the complaint shall provide the department with a written response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If, as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur

within two years of any previous violation, not to exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation.

f. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 20-925. Designation of agency.

[Repealed]

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Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 7: EARNED SICK TIME

§ 7-01. Definitions.

(a) As used in this chapter, the terms "calendar year," "domestic worker," "employee," "employer," "health care provider," "paid sick 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 chapter, the term "temporary help firm" means an organization that recruits and hires its own employees and assigns those employees to perform work or services for another organization to: (i) support or supplement the other organization's workforce; (ii) provide assistance in special work situations including, but not limited to, employee absences, skill shortages or seasonal workloads; or (iii) perform special assignments or projects.

§ 7-02. Business Size.

(a) Business size for an employer that has operated for less than one year shall be determined by counting the number of employees performing work for an employer for compensation per week, provided that if the number of employees fluctuates between less than five employees and five or more employees per week, business size may be determined for the current calendar year based on the average number of employees per week who worked for compensation for each week during the 80 days immediately preceding the date the employee used sick time.

(b) Business size for an employer that has operated for one year or more is determined by counting the number of employees working for the employer per week at the time the employee uses sick time, unless the number of employees fluctuates, in which case business size may be determined for the current calendar year based on the average number of employees per week during the previous calendar year. For purposes of this subdivision, "fluctuates" means that at least three times in the most recent calendar quarter the number of employees working for an employer fluctuated between less than five employees and five or more employees.

§ 7-03. Joint Employers and Temporary Help Firms.

(a) Where two or more employers have some control over the work or working conditions of an employee, the employers may be treated as a "joint employer" of the employee for purposes of complying with chapter 8 of title 20 of the Administrative Code ("the Earned Sick Time Act"). Joint employers may be separate and distinct entities with separate owners, managers and facilities.

(b) Every employer deemed to be a joint employer must count each employee jointly employed in

determining the number of employees performing work for compensation for the employer under the Earned Sick Time Act. For example, an employer who jointly employs three workers and also has three employees under its sole control has six employees for purposes of the Earned Sick Time Act and must provide paid sick time.

(c) In discharging their joint obligations under the Earned Sick Time Act, joint employers may allocate responsibility for the requirements of such Act among themselves.

(d) Except as limited by subdivision (f) of this section, all covered joint employers are responsible, individually and jointly, for compliance with all applicable provisions of the Earned Sick Time Act and satisfaction of any penalties imposed for any violation thereof, regardless of any agreement among joint employers.

(e) If an employee is employed jointly by two or more joint employers, all of the employee's work for each of the joint employers will be considered as a single employment for purposes of accrual and use of sick time under the Earned Sick Time Act.

(f) Notwithstanding any other provision of this section, where a temporary help firm places a temporary employee in an organization, the temporary help firm shall be solely responsible for compliance with all of the provisions of the Earned Sick Time Act for that temporary employee. For example, a temporary help firm that has 100 employees placed in several different organizations must provide paid sick time to each of its employees placed at the other organizations, regardless of the size of the organization where the temporary help firm places the employee.

§ 7-04. Employees.

(a) An employee is entitled to the protections of the Earned Sick Time Act regardless of immigration status.

(b) An individual is "employed for hire within the city of New York for more than eighty hours in a calendar year" for purposes of section 20-912(f) of the Administrative Code if the individual performs work, including work performed by telecommuting, for more than eighty hours while the individual is physically located in New York City, regardless of where the employer is located.

(i) Example: An individual who only performs work while physically located outside of New York City, even if the employer is based in New York City, is not "employed for hire within the city of New York" for purposes of section 20-912(f) for hours worked outside New York City.

(ii) Example: An individual performs twenty hours of work in New Jersey and sixty hours of work in New York City in a calendar year. The twenty hours of work performed by the employee in New Jersey do not count towards the employee's eighty hours of work for purposes of section 20-912(f).

§ 7-05. Minimum Increments and Fixed Intervals for the Use of Sick Time.

(a) Unless otherwise in conflict with state or federal law or regulations, an employee may decide how much earned sick time to use, provided however, that an employer may set a minimum increment for the use of sick time, not to exceed four hours per day, provided such minimum increment is reasonable under the circumstances.

(i) *Example:* An employee has worked eighty hours and more than one hundred twenty calendar days have passed since the employee's first day of work for the employer. The employer has set a minimum increment of four hours per day for use of sick time. The employee has not yet accrued four hours of time, but is entitled to use the time he or she has already accrued. 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 sick time as the minimum increment.

(ii) *Example:* An employee is scheduled to work from 8:00 am to 4:00 pm Mondays. She

schedules a doctor's appointment for 9:00 am on a Monday and notifies her employer of her intent to use sick time and return to work the same day. The employer's written sick time 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 pm.

(b) An employer may set fixed periods of thirty minutes or any smaller amount of time for the use of accrued sick time 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 (ii) of subdivision (a) of this section arrives to work at 12:17pm. Under her employer's written sick time policies, employees must use sick time 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 and require her to begin work at 12:30 pm. Similarly, if the employee wanted to leave work at 8:40 am to go to her 9:00 am doctor's appointment, the employer could require the employee to stop work at 8:30 am.

§ 7-06. Employee Notification of Use of Sick Time.

(a) An employer may require an employee to provide reasonable notice of the need to use sick time.

(b) An employer that requires notice of the need to use sick time where the need is not foreseeable shall provide a written policy that contains 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; or (3) use another reasonable and accessible means of communication identified by the employer. Such procedures for employees to give notice of the need to use sick time 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 sick time.

(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 sick time where the need is foreseeable shall have a written policy for the employee to provide reasonable notice. Such policy shall not require more than seven days notice prior to the date such sick time is to begin. The employer may require that such notice be in writing.

§ 7-07. Documentation from Licensed Health Care Provider.

(a) When an employee's use of sick time results in an absence of more than three consecutive work days, an employer may require reasonable written documentation that the use of sick time was for a purpose authorized under section 20-914(a) of the Administrative Code. Written documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation. "Work days" means the days or parts of days the employee would have worked had the employee not used sick time.

(b) If an employer requires an employee to provide written documentation from a licensed health care provider when the employee's use of sick time resulted in an absence of more than three consecutive work days, the employee shall be allowed a minimum of seven days from the date he or she returns to work to obtain such documentation. The employee is responsible for the cost of such documentation not covered by insurance or any other benefit plan.

(c) If an employee provides written documentation from a licensed health care provider in accordance with subdivision (a) of this section, an employer may not require an employee to obtain documentation from a second licensed health care provider indicating the need for sick

time in the amount used by the employee.

§ 7-08. Domestic Workers.

(a) Domestic workers who have worked for the same employer for at least one year and who work more than 80 hours in a calendar year will be entitled to two days of paid sick time per year, as provided in this section.

(b) The two days of paid sick time must be calculated in the manner that paid days of rest for domestic workers are calculated pursuant to New York State Labor Law section 161(1).

(c) A domestic worker described in subdivision (a) of this section is entitled to two days of paid sick time on the next date that such domestic worker is entitled to a paid day or days of rest under New York State Labor Law section 161(1), and annually thereafter.

(d) Sick time accrued by a domestic worker will carry over to the next calendar year.

§ 7-09. Rate of Pay.

(a) Except as provided in subdivision (b) of this section, when using paid sick time, an employee shall be compensated at the same hourly rate that the employee would have earned at the time the paid sick time is taken.

(b) If the employee uses sick time during hours that would have been designated as overtime, the employer is not required to pay the overtime rate of pay.

(c) An employee is not entitled to compensation for lost tips or gratuities, provided, however, that an employer must pay an employee whose salary is based in whole or in part on tips or gratuities at least the full minimum wage.

(d) For employees who 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) For employees who are paid on a piecework basis (whether base wage plus piecework or piecework only), the employer shall calculate the employee's rate of pay by adding together the employee's total earnings from all sources for the most recent workweek in which no sick time was taken and dividing that sum by the number of hours spent performing the work during such workweek. For purposes of this subdivision, "workweek" means a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods.

(f) 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 of pay that the employee would have been paid during the time the employee used the sick time.

(g) An employer is not required to pay cash in lieu of supplements for sick time used if remuneration for employment includes supplements. 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 Sick Time Act. For the purposes of this subdivision, "supplements" has the same meaning as provided in section 220(5)(b) of New York State Labor Law.

(h) Under no circumstance can the employer pay the employee less than the minimum wage for paid sick time.

§ 7-10. Payment of Sick Time.

(a) Sick time must be paid no later than the payday for the next regular payroll period beginning after the sick time was used by the employee.

(b) If the employer has asked for written documentation or verification of use of sick time pursuant to section 20-914(c) or 20-914(d) of the Administrative Code, the employer is not required to pay sick time until the employee has provided such documentation or verification.

§ 7-11. Employer's sale of business.

(a) If an employer sells its business or the business is otherwise acquired by another business, an

employee will retain and may use all accrued sick time if the employee continues to perform work within the City of New York for the successor employer.

(b) If the successor employer has fewer than five employees, and the former employer had more than five employees, the employee is entitled to use and be compensated for unused sick time accrued while working for the former employer, until such sick time is exhausted.

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

§ 7-12. Written Sick Time Policies.

(a) Every employer must distribute or post written policies on sick time and follow such written sick time policies. An employer's written sick time policies must meet or exceed all of the requirements of the Earned Sick Time Act and this Title and state at a minimum:

(1) The employer's method of calculating sick time as follows:

(i) If an employer provides employees with an amount of sick time that meets or exceeds the requirements of the Earned Sick Time Act on or before the employee's 120th day of employment and on the first day of each new calendar year, which for the purposes of this section is defined as "frontloaded sick time," then the employer's written sick time policy must specify the amount of frontloaded sick time to be provided;

(ii) If the employer does not apply frontloaded sick time, then the employer's written sick time policy must specify when accrual of sick time starts, the rate at which an employee accrues sick time and the maximum number of hours an employee may accrue in a calendar year;

(2) The employer's policies regarding the use of sick time, including any limitations or conditions the employer places on the use of sick time, such as:

(i) Any requirement that an employee provide notice of a need to use sick time;

(ii) Any requirement for written documentation or verification of the use of sick time in accordance with Sections 20-914(c) or 20-914(d) of the Administrative Code, and the employer's policy regarding any consequences of an employee's failure or delay in providing such documentation or verification;

(iii) Any reasonable minimum increment or fixed period for the use of accrued sick time; and

(iv) Any policy on discipline for employee misuse of sick time under Section 7-16 of this Title; and

(3) The employer's policy regarding carry-over of unused sick time at the end of an employer's calendar year in accordance with Section 20-913(h) of the Administrative Code;

(b) Employers must provide written notice of sick time policies using a delivery method that reasonably ensures that employees receive the policies. For example, an employer may comply with this subdivision by:

(1) distributing the policies to each employee personally, by regular mail or by email;

(2) distributing through company newspapers or newsletters, inclusion with paychecks, inclusion in employee handbooks or manuals, or posting on the company intranet;

(3) posting the policies in a conspicuous place where notices to employees are customarily posted; or

(4) using any means of distribution or posting that the employer uses in order to comply with section 195(5) of the New York State Labor Law.

(c) Nothing in this chapter shall prevent an employer from making exceptions to its written sick time policy for individual employees that are more generous to the employee than the terms of the employer's written policy.

(d) Requirements relating to an employer's additional and separate obligation to provide employees with a Notice of Rights under the Earned Sick Time Act are set forth in section 20-919 of the Administrative Code. An employer may not distribute the Notice of Rights required by Section 20-919 of the Administrative Code instead of distributing or posting its own written sick time policies as required by this section.

(e) An employer that has not provided to the employee a copy of its written policy along with any forms or procedures required by the employer related to the use of sick time shall not deny sick time or payment of sick time to the employee based on non-compliance with such a policy.

§ 7-13. Employer Records.

(a) Employers must retain records demonstrating compliance with the requirements of the Earned Sick Time Act, including records of any policies required pursuant to this Chapter, 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 forty hours or more;

(3) The date and time of each instance of sick time used by the employee and the amount paid for each instance;

(4) Any change in the material terms of employment specific to the employee; and

(5) 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 subpoena or document demand, an employer shall provide the department with access to records documenting its compliance with the requirements of the Earned Sick Time Act and the provisions of this chapter, upon appropriate notice, at the department's office.

(d) Alternately, in the absence of a subpoena or document demand, an employer shall provide the department with access to records upon appropriate notice and at a mutually agreeable time of day at the employer's place of business.

(e) "Appropriate notice" shall mean 30 days' written notice, unless the employer agrees to a lesser amount of time 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 or discrimination; or

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

(f) 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 (d) 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.

(g) An employer's failure to maintain, retain or produce a record otherwise required to be maintained under these rules that is relevant to a material fact alleged by the department in a

notice of hearing issued pursuant to the Earned Sick Time Act or these rules creates a reasonable inference that such fact is true.

§ 7-14. Enforcement and Penalties.

(a) The department may issue a notice of violation after conducting an investigation pursuant to section 20-924(c) of the Administrative Code.

(b) Additionally, the department may issue a notice of violation to an employer who fails to respond to a complaint or provide information requested by the Department in connection with a complaint, as required by section 20-924(c) of the Administrative Code, or who fails to provide records or access to records as required by section 20-920 of the Administrative Code provided that:
   (1) the department makes two written attempts to obtain the response to the complaint, requested information or records, or access to records; and
   (2) the department notifies the employer that failure to respond to the complaint, or provide requested information, records or access to records will result in a notice of violation charging the employer with failure to maintain, retain, or produce records and failure to comply with the requirements of the Earned Sick Time Act.

(c) An employer who fails to respond to the notice of violation issued under subdivision (b) of this section on or before the hearing date is subject to a penalty of five hundred dollars, in addition to any penalties or remedies imposed as a result of the department's investigation of the complaint.

(d) The employer may cure a notice of violation issued in accordance with subdivision (b) of this section without the penalty imposed in connection with subdivision (c) by:
   (1) producing the requested information or records on or before the first scheduled hearing date; or
   (2) resolving to the satisfaction of the department on or before the first scheduled hearing date the employee complaint that is the basis for the request for a response to the complaint.

(e) The department may conduct an investigation on its own initiative where the department has reason to believe that the facts and circumstances of an employer's practices related to the Earned Sick Time Act warrant investigation, including where:
   (1) the employer has a history of non-compliance with the Earned Sick Time Act, including failure to comply with settlements or orders of the department, or the department has reason to believe that the employer engages in a pattern of violations of the Earned Sick Time Act;
   (2) the department has reason to believe that the employer fails to pay minimum wage, prevailing wage, engages in discriminatory practices or retaliation, misclassifies employees as independent contractors or denies undocumented employees sick time required under the Earned Sick Time Act; or
   (3) the investigation is part of a coordinated enforcement effort with other state, local or federal agencies to protect employee rights.

(f) A finding that an employer has an official or unofficial policy or practice of not providing or refusing to allow the use of sick time as required under the Earned 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.

(g) For purposes of Section 20-924(e) of the Administrative Code, penalties shall be imposed on a per employee basis.

(h) If an employer, as a matter of policy or practice, does not allow accrual of sick time as required under the Earned Sick Time Act, the relief granted to each and every employee affected by the policy or practice must include either application of 40 hours of sick time to the employee's sick time balance or, where such information is known, application of the

number of hours of sick time the employee should have accrued to the employee's sick time balance, provided that such balance does not exceed 80 hours.

§ 7-15. Accrual, Hours Worked 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 Sick Time Act.

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

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

(d) For employees with indeterminate shift lengths (e.g. a shift defined by business needs), an employer shall base the hours of sick time used upon the hours worked by the replacement employee for the same shift. If this method is not possible, the hours of sick time must be based on the hours worked by the employee when the employee most recently worked the same shift in the past.

(e) If an employee is rehired within six months of separation from employment and had not reached the required 120 days to begin using accrued sick time under section 20-913(d)(1) of the Administrative Code at the time the employee separated from employment, upon resumption of employment, the employee shall be credited at least his or her previous calendar days towards the 120 day waiting period. For the purposes of this subdivision, "waiting period" shall mean the time period described in section 20-913(d)(1) of the Administrative Code between the start of employment or the effective date of the Earned Sick Time Act, whichever is later, and the 120th calendar day following the start of employment or the effective date of the Earned Sick Time Act, whichever is later.

(f) An employee may carry over up to 40 hours of unused sick time from one calendar year to the next, unless the employer has a policy of paying employees for unused sick time at the end of the calendar year in which such time is accrued and providing the employee with an amount of paid sick time that meets or exceeds the requirements of the Earned Sick Time Act 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 is only required to allow employees to accrue up to 40 hours of sick time in a calendar year. If an employee's sick time balance exceeds 40 hours in a single calendar year, an employer is only required to allow the employee to use up to 40 hours in such calendar year.

Example: An employee accrues 40 hours of sick time in calendar year one and uses 20 hours of sick time 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 sick leave balance at the end of calendar year two is 60 hours (20 hours from calendar year two plus 40 hours from 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.

§ 7-16. Employee Abuse of Sick Time.

An employer may take disciplinary action, up to and including termination, against an employee who uses sick time provided under the Earned Sick Time Act for purposes other than those described in section 20-914(a) of the Administrative Code. Indications of abuse of sick leave may include, but are not limited to a pattern of: (1) use of unscheduled sick time on or adjacent to weekends, regularly scheduled days off, holidays, vacation or pay day, (2) taking scheduled sick time on days when other leave has been denied, and (3) taking sick time on days when the employee is scheduled to work a shift or perform duties perceived as undesirable.

§ 7-17. Retaliation.

(a) For the purposes of Section 20-912(p) of the Earned Sick Time Act, "an adverse employment action" means any act that is reasonably likely to deter an employee from exercising rights guaranteed under the Earned Sick Time Act.

(b) The department may establish a causal connection between an employee's exercise of rights guaranteed under the Earned Sick Time Act and an employer's adverse employment action indirectly, such as with evidence that the protected activity was followed closely by the adverse employment action, or directly, with evidence of retaliatory animus directed towards an employee by an employer. Retaliation is established when the department shows that a protected activity was a motivating factor for an adverse employment action, even when other factors also motivated the adverse employment action.