

LOCAL LAW INTRO. NO. 10623 - 2018

A LOCAL LAW amending the Laws of Westchester County to add a new Chapter 585 which will provide earned sick leave for certain employees.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 585 is hereby added to the Laws of Westchester County to read as follows:

Chapter 585 - EARNED SICK LEAVE LAW

Sec. 585.01. Short Title.

Sec. 585.02. Definitions.

Sec. 585.03. Accrual of Earned Sick Time.

Sec. 585.04. Employer's Options; Collective Bargaining Agreements.

Sec. 585.05. Protections for Accrued Earned Sick Time.

Sec. 585.06. Use of Earned Sick Time.

**Sec. 585.07. Procedures Relating to the Request to Use
Earned Sick Time.**

**Sec. 585.08. Exercise of Rights Protected;
Retaliatory Personnel Actions Prohibited.**

Sec. 585.09. Notice and Posting.

Sec. 585.10. Employer Records.

**Sec. 585.11. Enforcement, Civil Action
and Penalties.**

Sec. 585.12. Confidentiality and Nondisclosure.

Sec. 585.13. Other Legal Requirements.

Sec. 585.14. Public Education and Outreach.

Sec. 585.15. Reverse Preemption.

Sec. 585.16. Severability.

Sec. 585.01. Short Title.

This Chapter shall be known as and may be cited as the "Earned Sick Leave Law."

Sec. 585.02. Definitions.

For Purposes of this Chapter:

1. "Calendar year" shall mean from January 1 to December 31 in any given year.
2. "Child" shall mean, regardless of age, a biological, adopted, foster child, legal ward or a person to whom the employee stands in *loco parentis* or to whom the employee stood *in loco parentis* when that person was a minor.
3. "Domestic partner" shall mean any "domestic partner" as defined under New York State Workers' Compensation Law section 4(1).
4. "Domestic worker" shall mean any domestic worker as defined in section 2(16) of the New York State Labor Law who is employed for hire within the Westchester County for more than eighty hours in a calendar year on a full-time or part-time basis.
5. "Earned sick time" means time that is accrued in accordance with 585.03 or calculated in accordance with 585.04 to be utilized for the purposes provided in Section 585.06 of this Chapter.
6. "Employee" shall 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, including work performed in subsidized private sector and not-for-profit employment programs, but not including:
 - a. work performed as a participant in a work experience program established by a social services district;
 - b. work performed pursuant to work study programs under 42 U.S.C. section 2753;
 - c. work performed by employees compensated by or through qualified scholarships as defined in 26 U.S.C. section 117.
7. "Employer" shall mean any "employer" as defined in section 190(3) of New York State Labor Law, except that an employer includes Westchester County government for its employees that are not subject to a collective bargaining agreement.
8. "Family member" means: an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse, domestic partner or household member. For purposes of this subdivision, "household member" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

9. “Health care professional” means any person licensed under Federal or State law to provide medical or emergency services, including but not limited to doctors, nurses, midwives and emergency room personnel.
10. “Parent” shall mean a biological, foster, step- or adoptive parent, a legal guardian of an employee or a person who stood in loco parentis when the employee was a minor.
11. “Personal time” shall mean leave with pay for personal business including, but not limited to, use for religious observance, attendance at funerals, necessary absences due to extraordinary weather conditions, attendance at conventions other than on required business, personal or family business appointments and similar reasons.
12. Persons who are “in loco parentis” shall mean those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
13. Retaliatory personnel action” means denial of any right guaranteed under this Chapter or any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report an employee’s suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the employee to a federal, state or local agency, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed under this Chapter. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this Chapter.
14. “Year”, other than “calendar year” means a regular and consecutive 12-month period as determined by the employer.

Sec. 585.03. Accrual of Earned Sick Time.

1. At the commencement of employment or 90 days after this law goes into effect, whichever is later, all employees, except for domestic workers, shall accrue a minimum of one hour of sick time for every 30 hours worked.
2. Employees of an employer with 5 or more employees shall be entitled to earn and use up to 40 hours of paid sick time in a year, unless the employer selects a higher limit. Paid sick time shall be compensated at the same hourly rate as the employee normally earns during hours worked, but in no case shall this hourly amount be less than that provided under section 652(1) of the labor law of New York. Employees of an employer with fewer than 5 employees shall be entitled to earn and use up to 40 hours of unpaid sick time in a year. In determining the number of employees performing work for an employer pursuant to this subdivision, 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 per week fluctuates, the number of

employees for the current calendar year may be based upon the average number of employees who worked per week during the preceding calendar year.

3. Domestic workers shall accrue a minimum of one hour of sick time for every seven days worked, which shall be in addition to the one day of rest provided for in New York State Labor Law section 161(1). All domestic workers employed by any employer, regardless of the number of domestic workers employed, shall be entitled to earn and use up to 40 hours of earned paid sick time in a year, unless the employer selects a higher limit.
4. Forty (40) hours is the maximum amount of sick leave to be accrued in a year.

Sec. 585.04. Employer's Options; Collective Bargaining Agreements.

1. Nothing in this Chapter shall be construed to discourage or prohibit an employer from allowing the accrual of earned sick time at a faster rate than provided herein; or from providing more sick time than provided herein.
2. In lieu of calculating the accrual of earned sick time, an employer shall have the option to provide an employee with sick time and personal time which if combined equals forty (40) hours or more per calendar year, or the year as determined by the employer (i.e., anniversary date). Such an employer shall be in compliance with this law, provided that the employee is permitted to take time as needed for sick time, with no advance notice necessary and no restrictions are placed on use of earned sick time other than those contained in this Chapter.
3. 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 earned and/or paid sick time to an employee than required herein. Nothing in this Chapter shall be construed as diminishing the rights of public employees regarding earned and/or paid sick time or use of earned and/or paid sick time as provided in the laws of New York State or Westchester County pertaining to public employees.

The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if:

(a) such provisions are expressly waived in such collective bargaining agreement; and

(b) 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.

Sec. 585.05. Protections for Earned Sick Leave.

1. Earned 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.
2. If any employee, including domestic workers, is transferred to a separate division, entity or location within Westchester County, but remains employed by the same employer, the employee is entitled to all unused earned sick time accrued at the prior division, entity or location provided that said prior division, entity or location is also located in Westchester County.
3. When there is a separation from employment and the employee is rehired within 9 months of separation by the same employer, previously accrued earned sick time that had not been used shall be reinstated.
4. When one employer is succeeded by another employer, all employees of the original employer who remain employed by the successor employer are entitled to all the unused earned sick time they accrued when employed by the original employer.

Sec. 585.06. Use of Earned Sick Time.

1. All earned sick time may be used for:
 - a. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;
 - b. The care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; and care of a family member who needs preventive medical care;
 - c. Any employer who is willing to pay for the use of an employee's earned sick time, may authorize an employee to utilize sick time if the employer reasonably determines that an employee's mental or physical illness, injury or health condition or an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition requires immediate attention;
 - d. The care for an employee or family member when it has been determined by the public health authorities having jurisdiction that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease where or not the employee or family member has actually contracted the communicable disease;

- e. The closure of the employee's place of business by order of a public official due to a public health emergency;
- f. The closure of a day care or elementary or secondary school attended by an employee's child where such closure was due to a public health emergency.
2. An employee's ability to use earned sick time may be delayed until the employee has worked for the employer for 90 days.
3. In the event that an employee only needs to use a portion of a day of earned sick time, an employee may use a minimum of four hours and, if more time is needed, then the smallest increment that the employer's payroll system uses to account for absence or use of other time.
4. At its discretion, an employer may loan earned sick time to an employee in advance of accrual by such employee.
5. Nothing in this section shall be construed as requiring an employer to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement or other separation from employment for unused accrued earned sick time.

Sec. 585.07. Procedures Relating to the Request to Use Earned Sick Time.

1. Earned sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.
2. When the use of earned sick time is foreseeable, the employee shall make a good faith effort to provide notice to the employer in advance and shall make a reasonable effort to schedule the use of earned sick time in a manner that does not unduly disrupt the operations of the employer.
3. An employer that requires notice of the need to use earned sick time shall provide a written policy that contains the procedures for the employee to provide notice. An employer that has not provided a copy of its written policy to the employee shall not deny earned sick time to the employee based on noncompliance with such policy.
4. An employer may not require, as a condition of an employee's use of earned sick time, that the employee find another employee to work during the time of the employee's absence.

5. For earned sick time of more than 3 consecutive work days, an employer may require the employee to provide reasonable documentation that the earned sick time has been used for a purpose covered by section 585.06 above. Documentation provided by the employee and signed by a health care professional indicating that earned sick time is necessary shall be considered reasonable documentation for purposes of this section. The employer cannot require a doctor to provide a note containing information in violation of HIPAA.

Sec. 585.08. Exercise of Rights Protected; Retaliatory Personnel Actions Prohibited;

1. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, the right to use earned sick leave.
2. It shall be unlawful for an employer to include used earned sick time as an absence that may lead to or result in discipline, discharge, demotion, or suspension.
3. An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has requested to use or has used earned sick time.
4. An employer shall not take retaliatory personnel action or discriminate against an employee that has filed a complaint regarding an employer's alleged violation of this Earned Sick Leave Law.
5. An employer shall not take retaliatory personnel action or discriminate against an employee that has informed another employee of his or her rights under the Earned Sick Leave Law.
6. There shall be a rebuttable presumption of unlawful retaliatory personnel action whenever an employer takes adverse action against an employee within 90 days of the filing of a complaint regarding an employer's alleged violation of this Earned Sick Leave Law.

Sec. 585.09. Notice and Posting.

1. At the commencement of employment or within 90 days of the effective date of this law, whichever is later, all employers shall give employees a copy of the Earned Sick Leave Law and written notice of how the law applies to that employee.
2. Employers shall display a copy of the Earned Sick Leave Law and a poster in English, Spanish and any other language deemed appropriate by the County of Westchester, in a conspicuous location accessible to the employee.
3. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$500 for each separate offense.

Sec. 585.10. Employer Records.

1. Employers shall retain records clearly documenting the hours worked by employees and earned sick time accrued and taken by employees, for a period of three years.
2. There shall be a rebuttable presumption of a violation of the Earned Sick Leave Law for an employer's failure to retain records in accordance with subdivision 1.

Sec. 585.11, Enforcement, Civil Action and Penalties,

1. The Department of Weights and Measures – Consumer Protection (hereinafter referred to in this section as the “Department”) shall establish a process to receive complaints from a person alleged to have been aggrieved by an employer's non-compliance with this Chapter. Such complaint must be filed within one (1) year after the occurrence of the alleged violation. Once a complaint is received, the Department shall investigate the complaint, and if the Department finds probable cause to support that a violation has occurred, it shall attempt to facilitate a resolution.
2. If there has been no resolution of the matter in accordance with subdivision 1 above, then the Department shall issue a summons to the employer in the form of an appearance ticket that shall give notice of alleged violation and set forth the time and place of the hearing on such complaints, which shall not be less than eight days following service of the summons. Such hearing shall be held before a hearing officer who shall hear testimony and examine exhibits as may be offered and received in evidence, but shall not be required to follow strict rules of evidence. The hearing officer shall have the power to:
 - a. dismiss the complaint if not proven by a preponderance of the evidence;
 - b. adjust the matter upon consent; or
 - c. determine a violation has occurred and impose any of the following penalties and any other penalties as may be provided for in this chapter:
 - i. Require the employer to pay the employee three times the wages that should have been paid under this Chapter or two hundred fifty dollars, whichever is greater for each instance of sick time taken by an employee but unlawfully not compensated by the employer;
 - ii. Require the employer to pay the employee five hundred dollars 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 another employee to work;

- iii. Grant such additional relief, as it deems appropriate, the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of the Earned Sick Leave Law, reasonable attorney's fees, the cost of the administrative hearing, and other monetary or equitable relief as may be appropriate, without limitation, reinstatement to employment and back pay.

The determination of the hearing officer shall be served upon the parties. The aggrieved party may appeal said determination to a court of competent jurisdiction by the commencement of a proceeding within 30 days after service of said order upon the aggrieved party. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in this subdivision.

3. In lieu of the procedures set forth in subdivision 1 & 2 above, any person who claims to have been aggrieved by a violation of this Chapter may commence a civil action in the appropriate court of jurisdiction not later than one (1) year after the occurrence of an alleged violation. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in subdivision 2 above.

Sec. 585.12. Confidentiality and Nondisclosure.

1. Health information about an employee or family member obtained solely for the purposes of utilizing sick time shall be treated as confidential and shall not be disclosed except with the written permission of the affected employee, unless such disclosure is otherwise required by law.
2. Any health or safety information possessed by an employer regarding an employee or employee's family member must be maintained on a separate form and in a separate file from other personnel information.

Sec. 585.13. Other Legal Requirements.

This Chapter provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, or policy that provides for greater accrual or use by employees of earned sick time or that extends other protections to employees. In addition, nothing in this Chapter shall be construed to prevent, interfere or conflict with any rights of an employee under the New York Disability Benefits Law and Paid Family Leave Benefits Law, N.Y. Workers' Comp. Law § 200 et seq.

Sec. 585.14. Public Education and Outreach.

The Westchester County Human Rights Commission shall develop and implement a multilingual outreach program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned sick time under this Chapter. This

program shall include the distribution of notices and other written materials in English and Spanish and any language deemed appropriate by the Westchester County Human Rights Commission to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers in Westchester County.

Sec. 585.15. Reverse Preemption.

This local law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The Board of Legislators may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Sec. 585.16. Severability.

If any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

§2. This Local Law shall take effect 180 days after its adoption, except that in the case of employers who have employees covered by a collective bargaining agreement as specified in Section 585.04(3), this local law shall apply beginning on the stated expiration date in the collective bargaining agreement.

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Local Law, Local Law Intro No. 10623 - 2018, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Local Law, which was duly adopted by the County Board of Legislators, of the County of Westchester on October 1, 2018, and approved by the County Executive on October 12, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 12th day of October, 2018.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

