



Legislation Text

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Int. No. 1313-A

By Council Members Ferreras-Copeland, Salamanca, Levin, Chin, Menchaca, Constantinides, Miller, Cohen, Rosenthal, Espinal, Cornegy and the Public Advocate (Ms. James) (in conjunction with the Mayor)

A Local Law to amend the administrative code of the city of New York in relation to safe time for victims of family offense matters, sexual offenses, stalking and human trafficking, and their family members

Be it enacted by the Council as follows:

Section 1. Section 20-911 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, is amended to read as follows:

§ 20-911 Short title. This chapter shall be known and may be cited as the “Earned Safe and Sick Time Act.”

§ 2. Section 20-912 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, subdivisions b, g and h as amended by local law number 7 for the year 2014, subdivisions t, u and v as added by local law number 7 for the year 2014, subdivision s as amended by local law number 104 for the year 2015, is amended to read as follows:

§ 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.

“Commissioner” shall mean the head of such office or agency as the mayor shall designate pursuant to section 20-a of the charter.

“Department” shall mean such office or agency as the mayor shall designate pursuant to section 20-a of the charter.

[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 subdivision 2 of section [190(2)] 190 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 section 92 of the general municipal law [section 92] or section 207 of the county law [section 207].

[g.] “Employer” shall mean any “employer” as defined in subdivision (3) of section [190(3)] 190 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; any other individual related by blood to the employee; and any other individual whose close association with the employee is the equivalent of a family relationship.

“Family offense matter” shall mean an act or threat of an act that may constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision 1 of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree,

identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions 1, 2 and 3 of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household.

“Grandchild” shall mean a child of an employee’s child.

“Grandparent” shall mean a parent of an employee’s parent.

[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.

“Human trafficking” shall mean an act or threat of an act that may constitute sex trafficking, as defined in section 230.34 of the penal law, or labor trafficking, as defined in section 135.35 and 135.36 of the penal law.

“Member of the same family or household” 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.

[k.] “Paid [sick] safe/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] safe/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] safe/sick time than the employee's regular rate of pay at the time the employee uses such paid [sick] safe/sick time, except that in no case shall the paid [sick] safe/sick time hourly rate be less than the hourly rate provided in subdivision 1 of section [652 (1)] 652 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 subdivision d of section [3.01(d)] 3.01 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.

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

is required pursuant to this chapter.

“Sexual offense” shall mean an act or threat of an act that may constitute a violation of article 130 of the penal law.

“Sibling” shall mean an employee’s brother or sister, including half-siblings, step-siblings and siblings related through adoption.

[q.] “Sick time” shall mean time that is provided by an employer to an employee that can be used for the purposes described in subdivision a of 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.

“Stalking” shall mean an act or threat of an act that may constitute a violation of section 120.45, 120.50, 120.55, or 120.60 of the penal law.

[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.]

§ 3. Section 20-913 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, subdivision a as amended by local law number 7 for the year 2014, and subdivision h as amended by local law number 6 for the year 2014, is amended to read as follows:

§ 20-913 Right to [sick] safe/sick time; accrual. a. All employees have the right to [sick] safe/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] safe/sick to their employees in accordance with the provisions of this chapter.

2. All employees not entitled to paid [sick] safe/sick pursuant to this chapter shall be entitled to unpaid [sick] safe/sick time in accordance with the provisions of this chapter.

b. All employers shall provide a minimum of one hour of [sick] safe/sick time for every thirty hours worked by an employee, other than a domestic worker who shall accrue [sick] safe/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] safe/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 subdivision 1 of section [161(1)] 161 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] safe/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] safe/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 subdivision 1 of section [161(1)] 161 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] safe/sick time required pursuant to this chapter, is not required to provide additional paid [sick] safe/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] safe/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] safe/sick time required pursuant to this chapter, is not required to

provide additional unpaid [sick] safe/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] safe/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] safe/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] safe/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 subdivision 1 of section [161(1)] 161 of the labor law, such domestic worker shall also be entitled to two days of paid [sick] safe/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] safe/sick time shall be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of subdivision 1 of section [161(1)] 161 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] safe/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 subdivision 2 of section [190(2)] 190 of the labor law, and (iv) hourly professional employees.

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

h. Except for domestic workers, up to forty hours of unused [sick] safe/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] safe/sick time in a calendar year or (ii) carry over unused paid [sick] safe/sick time if the employee is paid for any unused [sick] safe/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] safe/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] safe/sick time accrued at the prior division, entity or location and is entitled to retain or use all [sick] safe/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] safe/sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued [sick] safe/sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such [sick] safe/sick time to the extent the employee was paid for unused accrued [sick] safe/sick time prior to separation and the employee agreed to accept such pay for such unused [sick] safe/sick time.

§ 4. Sections 20-914, 20-915 and subdivision a of 20-916 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

§ 20-914 Use of [sick] safe/sick time. a. Sick time.

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

[1.](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

[2.](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

[3.](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 a public official due to a public health emergency.

2. For an 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.

b. Safe time.

1. An employee shall be entitled to use safe time for absence from work due to any of the following reasons when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

(a) 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) 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) 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) to file a complaint or domestic incident report with law enforcement;

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

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

(g) 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.

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, an attorney, a member of the clergy, or a medical or other professional service provider from whom the employee or that employee's family member has sought assistance in addressing 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 family offense matter, sexual offense, stalking, or human trafficking.

c. An employer may require reasonable notice of the need to use [sick] safe/sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such [sick] safe/sick time, not to exceed seven days prior to the date such [sick] 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 [sick] safe/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] safe/sick time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking [sick] 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 [sick] safe/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] 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. 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] 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.

§ 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] safe/sick time, and holiday and Sunday time pay at premium rates.

§ 5. Subdivisions a and b of section 20-919 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, subdivision a as amended by local law number 6 for the year 2014, are amended to read as follows:

§ 20-919 Notice of rights. a. 1. 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] safe/sick pursuant to this chapter, including the accrual and use of [sick] safe/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.

2. Notices provided to employees pursuant to this section on and after the effective date of this paragraph shall in addition inform employees of their right to safe time under this chapter. Employers shall give employees who have already received notice of their right to sick time pursuant to this section notice of their right to safe time within thirty days of the effective date of this paragraph.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section concerning sick time and safe time 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.

§ 6. Sections 20-921 and 20-922 and subdivision a of 20-923 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

§ 20-921 Confidentiality and nondisclosure. a. [No person or entity] An employer may not require the disclosure of details relating to an employee's or his or her family member's medical condition or require the disclosure of details relating to an employee's or his or her family member's status as a victim of family offenses, sexual offenses, stalking, or human trafficking as a condition of providing [sick] safe/sick time under this chapter. Health information about an employee or an employee's family member, and information concerning an employee's or his or her family member's status or perceived status as a victim of family offenses, sexual offenses, stalking or human trafficking obtained solely for the purposes of utilizing [sick] safe/sick time pursuant to this chapter, shall be treated as confidential and shall not be disclosed except by the affected employee, with the written permission of the affected employee or as required by law. Provided, however, that nothing in this section shall preclude an employer from considering information provided in connection with a request for safe time in connection with a request for reasonable accommodation pursuant to section 8-107.1 of the administrative code.

§ 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 safe time or 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 safe time or sick time to an employee than required herein.

c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding safe time or sick time as provided pursuant to federal, state or city law.

§ 20-923 Other legal requirements. a. This chapter provides minimum requirements pertaining to safe time and 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 safe leave or time or sick leave or time, whether paid or unpaid, or that extends other protections to employees.

§ 7. This local law takes effect 180 days after it becomes law, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law takes effect on the date of the termination of such agreement, and provided further that the director of the office of labor standards may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, prior to such effective date.

MWC
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