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## **Westchester's Earned Sick Leave Law: What Employers Need to Know**

### *1. What is the Earned Sick Leave Law?*

Covered employers must comply with Westchester County's Earned Sick Leave Law starting April 10, 2019. Under the law, covered employees have the right to use sick leave for the care and treatment of themselves or a family member. The Westchester County Human Rights Commission (HRC) has prepared this sheet to provide general guidance to covered employers about their obligations under the new law.

### *2. When does the Earned Sick Leave Law go into effect?*

The Earned Sick Leave Law goes into effect on April 10, 2019.

### *3. Are all employees covered by the Earned Sick Leave Law?*

In general, employees who work in Westchester County for more than 80 hours in a calendar year for a covered employer, full-time or part-time, are covered by the Earned Sick Leave Law. Some exceptions apply. Employees not covered by the Earned Sick Leave Law include participants in a work experience program established by a social services district; participants in a work study program under 42 U.S.C. § 2753; employees compensated by or through qualified scholarships under 26 U.S.C. § 117; and employees of government agencies. However, Westchester County government must comply with the Earned Sick Leave Law with respect to its hourly employees that are not subject to a collective bargaining agreement and that meet the eligibility requirements in the law. Westchester County government employees who are covered by a collective bargaining agreement are not "covered employees" for the purposes of the Earned Sick Leave Law.

### *4. Are government agencies required to comply with the Earned Sick Leave Law?*

Government agencies are exempt from the Earned Sick Leave Law, except that Westchester County government must comply with respect to its employees that are not subject to a collective bargaining agreement.

### *5. Are covered employers required to give paid sick leave?*

A covered employer's obligations are based upon its number of employees, both part- and full-time.

<b>Number of Employees</b>	<b>Rate of Accrual of Sick Leave</b>	<b>Max. Sick Leave per Year</b>	<b>Paid or Unpaid</b>
5 or more	One hour per 30 hours worked	Up to 40 hours	Paid
1-4	One hour per 30 hours worked	Up to 40 hours	Unpaid
1 or more domestic workers*	One hour per 7 days worked	Up to 40 hours	Paid

**\*Domestic Workers:** Sick leave covered under this law is in addition to the “days of rest” covered under New York State Labor Law. Go to [labor.ny.gov](http://labor.ny.gov) and search “Domestic Workers’ Bill of Rights” for more information.

6. *Can covered employers give covered employees sick leave at the beginning of the year?*

Covered employers have the option of applying the Earned Sick Leave Law or, in lieu of calculating the accrual of earned sick time, a covered employer can provide for sick time and personal time equal to 40 hours or more at the beginning of the employer’s year. This is sometimes known as “front loading” or “up-front” leave. This practice is compliant with the Earned Sick Leave Law so long as there are no restrictions placed on an employee’s ability to use the leave above those allowed by the law.

7. *Do covered employers have to give notice to covered employees of their rights under the Earned Sick Leave Law?*

Covered employers must give covered employees a copy of the Earned Sick Leave Law and written notice of their rights to sick leave. Sample notices in English and Spanish are available on the HRC webpage.

<b>Employee</b>	<b>Date Written Notice Due to Employee</b>
<i>Employed on or before July 10, 2019</i>	July 10, 2019
<i>First employed after July 10, 2019</i>	Date of first employment

8. *When does a covered employee begin to accrue sick leave?*

Covered employees will begin to accrue sick leave on July 10, 2019, or on the date of first employment, whichever is later.

9. *For what instances can a covered employee use earned sick leave?*

A covered employee can use sick leave when:

- The covered employee has a mental or physical illness, injury, or health condition; the covered employee needs to get a medical diagnosis, care, or treatment of their mental or physical illness, injury or condition; the covered employee needs preventative medical care.

- The covered employee must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventative medical care.
- The covered employer's business closes due to a public health emergency or the covered employee needs to care for a child whose school or childcare provider closed due to a public health emergency.

A "family member" is the covered employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent. A "family member" also includes the child or parent of the covered employee's spouse, domestic partner or a member of the covered employee's household. A "child" includes a biological child, adopted, foster child, legal ward or a person to whom the covered employee stand *in loco parentis*, regardless of age.

*10. Can a covered employer require a covered employee to provide a doctor's note when he or she uses earned sick leave?*

A covered employer can require documentation from a health care provider if the covered employee uses more than three consecutive workdays as sick leave. A covered employer may not require the health care provider to specify the medical reason for sick leave.

*11. What records must a covered employer keep to document compliance with the Earned Sick Leave Law?*

A covered employer must keep records clearly documenting the hours worked by covered employees, earned sick time accrued, and earned sick time used, for a period of three years. Failure to do so will provide a rebuttable presumption of a violation of the Earned Sick Leave Law.

*12. Can a covered employer require advance notice for use of sick leave?*

If the need is foreseeable, a covered employer can require notice of a covered employee's intention to use sick leave. If the need is unforeseeable, a covered employer may require the covered employee to give notice as soon as practicable. If notice is required, the procedure a covered employee must follow to use sick leave must be provided in writing.

*13. What if a covered employee has unused accrued sick leave at the end of the year?*

A covered employee can carry over up to 40 hours of unused accrued sick leave into the new year.

*14. What will happen if a covered employee files a complaint against a covered employer?*

Upon receipt of a complaint, the Westchester County Department of Consumer Protection (DCP) shall investigate all allegations. If DCP finds probable cause to support the complaint, it shall attempt to facilitate a resolution and, if no resolution is possible, proceed with a hearing on the matter.

For general questions about the Earned Sick Leave Law, contact the Westchester County Human Rights Commission at (914) 995-7710 or via email at [humanrights@westchestergov.com](mailto:humanrights@westchestergov.com). This general guidance is not intended to provide specific legal advice and is not a substitute for specific legal advice. If you have substantive questions about the Earned Sick Leave Law and its application, you are advised to consult an attorney to obtain specific legal advice.