New York City's Earned Safe and Sick Time Act Amendment: Private Right of Action

On Jan. 20, 2024, The New York City Council amended the City's Earned Safe and Sick Time Act (ESSTA), to create a private right of action for employees claiming violations of ESSTA. The new law amends Section 20-924 of the New York City Administrative Code and allows employees to commence a civil action alleging a violation of ESSTA within two years of the date the employee knew or should have known of the alleged violation. The new law becomes effective **March 20, 2024**.

Currently, the sole redress for employees alleging violations of ESSTA is to submit an administrative complaint to the New York City Department of Consumer and Worker Protection (DCWP). The new amendment will allow employees to file both an administrative complaint with the DCWP and a civil action in a court of competent jurisdiction for the same alleged ESSTA violation. Employees are not required to file an administrative complaint with the DCWP prior to commencing an action in court for alleged ESSTA violations.

If an employee files both a civil suit and a DCWP complaint against the employer for the same alleged ESSTA violation, the DCWP will stay its investigation until it receives notice that the civil suit has been withdrawn or dismissed without prejudice. Once DCWP receives notice of a final judgment or settlement of the civil action, DCWP may dismiss the complaint unless it determines that the complaint alleges a violation that was not resolved by such judgment or settlement. The employee must notify DCWP within 30 days after the time for any appeal has lapsed that such complaint is withdrawn, dismissed without prejudice, or resolved by final judgment or settlement.

Employees who prove a violation of ESSTA may recover:

- Three times the wages that should have been paid pursuant to ESSTA or $250, whichever is greater, for every instance where an employee is not compensated properly by the employer for safe and sick time taken.

- $500 for every instance where an employee requested safe and sick time that was (a) wrongfully denied by the employer and not taken by the employee; (b) wrongfully conditioned upon a requirement that the employee search or find a replacement worker prior to approval; or (c) wrongfully subjected to a requirement that the employee work additional hours to make up for the original hours for which the employee was scheduled, without the mutual consent of the employer and employee.

- Full compensation for wages and benefits lost, plus $500 and equitable relief as deemed appropriate, for every instance of retaliation and interference.

- $2,500, full compensation, including wages and benefits lost; and equitable relief, including reinstatement, as deemed appropriate for each instance of unlawful discharge from employment.

- $500 for each employee covered by a policy that does not provide or allow for the use of safe and sick time pursuant to ESSTA.

In addition, the amendment permits an employee to seek injunctive relief and declaratory relief, attorney's fees and costs, and any other relief that the court deems appropriate.

The amendment also expands ESSTA's civil penalty provisions for entities found to be in violation of provisions regarding the accrual and use of sick or safe time or retaliation, on a per employee basis, of up to $500 to be paid to the city for the first violation. Subsequent violations that occur within two (2) years of any previous violation, entities will be liable of up to $750, not to exceed $1,000 for each succeeding violation.

If you have any questions about the information presented in this news alert, please contact Lance Willoughby-Hudson, any attorney in Bond's labor and employment practice or the Bond attorney with whom you are regularly in contact.