CLIENT ALERT: New York City Law Requires Earned Sick Time

Effective April 1, 2014, employers in New York City with at least 20 employees will be required to provide five days of paid sick leave per year. The law (Intro. No. 97-A) expands to apply to businesses and nonprofits with 15 or more employees on October 1, 2015.

On the effective date, covered employers will be mandated to provide one hour of paid sick time for every 30 hours worked by the employee. Acceptable uses of sick time will include an employee's mental or physical illness and care of family members for their mental or physical medical illness. Employees are also entitled to use this time when their place of business—or a child's school or childcare provider—is closed by a public official due to a public health emergency. The law grants employees certain rights to carry over sick time from year to year or be paid out at year end. However, the law does not require the employer to reimburse an employee upon the employee's termination from employment, resignation, retirement, or other separation from employment for accrued sick time that has not been used.

The law also requires that the employer inform employees about their right to earned sick leave and that the employer retain records reflecting their compliance with the law. Employers may require reasonable notice of the need to use sick leave where such need is foreseeable, and are able to ask for "reasonable documentation" when absences last more than three work days in a row. Nothing in the law prohibits an employer from taking disciplinary action, up to and including termination from employment, against a worker who uses sick time provided under the law for reasons other than those mentioned above. Covered employers should be cautious, however, as the law also protects employees from retaliation—real or threatened—in response to workers exercising their right to paid sick leave. Any employer found to have violated any provision of the law may be required to compensate the employee and will be liable for a civil penalty payable to the city.

Employers should note that the law will not apply to workers covered by a collective bargaining agreement, but only if the applicable collective bargaining agreement expressly waives the right to paid sick days and provides for comparable benefits, such as "vacation time, personal time, sick time, and holiday." The provisions of the law also do not apply to independent contractors, work-study students, government employees, and certain hourly occupational, speech, and physical therapists. Certain workers in the manufacturing sector are excluded, although the law provides job protection for up to 40 hours of unpaid sick time. Special provisions also apply to domestic workers, who accrue time at different rates.

Addressing the concerns of small-business owners, the City Council amended the law to require the city's Independent Budget Office to evaluate the impact of paid sick leave on employers and the economy. If it determines that the New York economy is performing worse at the end of this year compared with last year, the Independent Budget Office has the power to delay the effective date of

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the law beyond April 1, 2014.

Employers are encouraged to contact their MBJ attorney with questions about this and other sick time laws.

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