NYC Leave Law Expands Compliance Beyond Written Policies

By **Angelo Spinola, Jack Blum and Liam Whitaker** (March 19, 2026)

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New York City has amended its Earned Safe and Sick Time Act again. Effective Feb. 22, Local Law 145 of 2025 expands ESSTA's protected uses, gives employees a separate 32-hour bank of immediately available protected time off and replaces the former guaranteed schedule change entitlement in the city's Temporary Schedule Change Act, or TSCA, with a new protected right to request schedule changes.[1]

For employers, the headline is not merely that employees have access to more leave. The amendments require operational precision in tracking multiple leave banks, applying them in the correct order, revising policies and employee notices, updating pay statement disclosures, and training managers to avoid retaliation — including retaliation that can occur through attendance policies or scheduling decisions.

In parallel, the New York City Department of Consumer and Worker Protection signaled that enforcement will be active. In February, the city announced compliance warnings to 56,000 employers and a data-driven enforcement strategy aimed at identifying employers with leave-use rates that appear to be unusually low, which acts as a potential indicator that employees are being discouraged from using protected time off.[2]

The practical consequence is that compliance risk now turns less on whether an employer nominally offers leave, and more on whether its payroll systems, attendance rules and frontline managers actually allow employees to use a separate immediate leave bank for a broader set of short-notice absences without discipline.

Adding Unpaid Safe and Sick Leave

Pursuant to the amendments, the DCWP's updated guidance now makes clear that, regardless of employer size or income, employees must receive 32 hours of unpaid protected time off that is immediately available for use as of Feb. 22. This new bank is layered on top of employers' existing ESSTA obligations to provide accrued protected time off, which is paid for most employers and unpaid for certain small employers. Three implementation points matter most: timing, carryover and order of use.

Timing and Refresh

In addition to the 32 hours of unpaid protected time off that became available on Feb. 22, employees must receive a fresh bank of 32 hours on the first day of the employer's calendar year. For employers using a January to December calendar year, for example, employees had 32 immediately available hours as of Feb. 22 and will receive a fresh 32-hour bank on Jan. 1. New hires receive their 32 hours on their first day of work. The DCWP's recent guidance also indicates that employers may not prorate this benefit for employees hired midyear.

No Carryover

Unlike the 32-hour immediately available bank, unused accrued protected time off may carry over, but only up to the law's statutory cap, which is 40 hours for employers with 99 or fewer employees and 56 hours for employers with 100 or more employees, unless the employer offers a more generous policy.

Order of Use

When an employee has both paid and unpaid protected time off available, employers should apply paid protected time off to cover the absence unless the employee specifically asks to use unpaid time first. This order matters for payroll, employee relations and risk management, and should be reflected in policy language and supervisor training.

Expanding ESSTA-Protected Absences

Local Law 145 broadened when employees may use protected time off, and the DCWP's updated materials emphasize that protected time off can cover more than traditional illness and preventive care. The following are several key additions.

Childcare

Employees may use protected time off to care for a child, including during school holidays and for unexpected disruptions, such as daycare closures or babysitter cancellations.

Public Benefits and Housing

Employees may use protected time off to attend, or prepare for, legal proceedings or hearings related to public benefits or housing, and to take necessary steps to apply for, or keep, public benefits or housing for themselves or covered family members.

Public Disasters

Employees may use protected time off to stay home during a public disaster declared by the president, governor or mayor, including when a government official directs people to remain indoors or avoid travel, or when an employee's workplace or a child's school or daycare is closed. The DCWP's guidance specifically notes severe weather events as one example, but the concept extends to other declared emergencies as well.

Workplace Violence

Protected time off may be used to seek assistance or take safety measures if an employee or their family member is a victim of workplace violence, in addition to the law's long-standing "safe time" protections tied to domestic violence, stalking, human trafficking and certain other crimes. The DCWP's FAQ state that employees do not need to prove that a crime occurred or that it was reported in order to use protected time off for these reasons.

These additions will often present as intermittent, short-notice absences, e.g., a childcare cancellation or a travel restriction announced during a storm. Employers should assume that the risk of misclassification — treating a protected absence as unexcused — is increasing.

Scaling Back Schedule Changes Under the TSCA

Local Law 145 aligned the ESSTA and the TSCA by replacing the TSCA's guaranteed right to request two days of temporary schedule changes with the new 32-hour unpaid protected time-off bank. But the city did not eliminate schedule flexibility entirely. Employees retain a protected right to request temporary schedule changes, including changes to shift time, location, remote work or shift swaps. Employers may deny a request, but they cannot retaliate against employees for making one.

For employers, this creates a two-track analysis. The TSCA request is discretionary in outcome, but protected in process, so denials should be consistent, prompt and documented. At the same time, accommodation laws remain mandatory. Even when an employer may deny a TSCA request, federal, state and local accommodation regimes — i.e., disability, religious and pregnancy-related — may independently require schedule changes based on individualized circumstances.

Ensuring Compliance Via Operations

In enforcement matters, the most expensive mistakes are often the administrative ones: a missing pay stub disclosure, an outdated notice or a supervisor who demands details that the law prohibits an employer from requesting.

Pay Statement Disclosures

The DCWP requires employers to provide employees with a pay statement each pay period that shows the protected time off that they accrued and used during the pay period, the amount of immediately available unpaid protected time off, and the amount of accrued protected time off that is available for use in the calendar year.

Employers that use an online portal instead of a pay stub must also alert employees each pay period that such information is available, and ensure that current and prior pay period information is easy to access.

Notice of Rights and Language Obligations

Employers must give each employee a written notice of employee rights and post it in the workplace. The notice must be provided at hire and whenever rights change. Employees have a right to receive the notice in English and, if available on the DCWP's website, their primary language.

Posting obligations are also language-sensitive. Employers must post the notice in English and in any other language that is spoken as a primary language by at least 5% of employees at the workplace, if translations are available. The DCWP updated its official notice on Feb. 19, so employers should confirm that they are using the current version.[3]

Documentation Rules and Confidentiality

After more than three consecutive workdays of protected time off, employers may request reasonable documentation. The documentation need only show that the employee needed the amount of leave taken — not the employee's diagnosis or any other underlying details. Employers can't demand the reason for leave, must give employees at least seven days after their return to submit documentation and may have reimbursement obligations.

Employers also must keep information obtained through protected time-off requests

confidential, subject to limited exceptions. These are manager training issues as much as they are issues related to human resources policy.

Why This Matters

Compliance risks are not limited to whether an employer has given employees enough hours on paper. It turns on whether employees can use protected time off without encountering unlawful barriers.

Two aspects of the amendments heighten that risk. First, the new 32-hour bank eliminates the accrual gap for new hires and for employees early in the calendar year — precisely when employers' attendance systems tend to be strictest, and when employees are least likely to have a paid leave cushion. Employers should expect more protected absences from employees who previously would have had no statutory leave available.

Second, the DCWP's public messaging makes clear that enforcement is moving beyond complaint-driven investigations. It has announced a data-driven enforcement approach that treats unusually low leave-use rates as a potential sign that employers are restricting use, and it has identified common barriers, such as nonexistent or insufficient written policies, unlawful administration systems, and attendance policies that discipline last-minute callouts.

The DCWP has also publicly described meaningful financial exposure for violations, including employee relief, civil penalties and, in some cases, back pay, which underscores why employers should treat these changes as a compliance priority, not simply an HR-policy refresh.

Practical Takeaways

Employers that have not yet fully operationalized the Feb. 22 changes should consider taking the following steps in an immediate, targeted audit:

- Confirm the company's calendar year: Document it, ensure that it is used consistently across policies and payroll, and that it is reflected in the notice of employee rights and any written protected time-off policy.

- Update payroll and timekeeping systems: Confirm separate tracking of accrued paid protected time off and the 32-hour immediately available unpaid bank, including required pay statement disclosures and the rule about using paid leave first unless the employee chooses otherwise.

- Review policy language for unlawful barriers: Pay particular attention to waiting periods, blackout dates, strict call-in rules, no-fault attendance point systems or automatic discipline triggered by short-notice absences.

- Standardize the response process for temporary schedule change requests: Even if the ultimate decision is discretionary, a consistent process and an escalation path for accommodation analyses reduce risk.

- Verify notice distribution and posting: Use the updated DCWP notice, provide it in the required languages, maintain proof of receipt, and ensure that postings are conspicuous and current.

Conclusion

Local Law 145's ESSTA amendments are now in effect, and the DCWP's recent enforcement announcements suggest that compliance will be judged not only by whether an employer has a written policy, but by whether employees can actually use protected time off without facing barriers or discipline. Employers that treat the Feb. 22 changes as an operational project — integrating payroll, policy and manager behavior — will be best positioned to reduce risk while maintaining predictable workforce management.

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[1] https://legistar.council.nyc.gov/View.ashx?GUID=EC8D4FC2-1336-4173-A7B0-AD58E99DCCCC&ID=15000259&M=F.

[2] https://www.nyc.gov/site/dca/news/020-26/mayor-mamdani-major-expansion-protected-time-off-4-3-million-workers-new.

[3] https://www.nyc.gov/assets/dca/downloads/pdf/about/PaidSafeSickLeave-MandatoryNotice-English.pdf.