

# New York City Council to Consider Expanding Earned Safe and Sick Time Act to Require “Personal Time”



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The New York City Council is [considering a bill](#) that would expand the NYC Earned Safe and Sick Time Act (ESSTA) to provide eligible employees with “personal time” that could be used for any reason. The bill would also expand protections and remedies applicable to all leave under the law, including sick and safe time.

First introduced in April 2018 but never advancing out of committee, the bill is now back on the City Council’s working agenda. While the bill is still in the early stages of consideration and its future remains to be seen, Mayor Bill de Blasio has [expressed his support](#) for paid personal leave.

## ***Accrual and Use of Personal Time***

Under the proposed bill, employees who are currently eligible for sick and safe time under ESSTA (*i.e.*, employees who work more than 80 hours in a calendar year in NYC, as well as non-agency employed domestic workers) would also be eligible to accrue 1 hour of personal time for every 30 hours worked, up to 80 hours per year. Personal time would be in addition to sick and safe time presently available under ESSTA.

Employees would be able to carry over up to 80 hours of accrued but unused personal

time into the following year for immediate use, but could be restricted from using more than 80 hours of personal time in a given year. Alternatively, employers could front load 80 hours of personal time at the start of each year to avoid the carryover requirements.

Similar to the current requirements for sick and safe time under ESSTA, employers with five or more employees would be required to provide paid personal time, while smaller employers would be required to provide the time as unpaid leave. Covered domestic workers would be entitled to paid personal time regardless of employer size.

Personal time would be able to be used for any reason, including reasons already covered by the sick and safe time provisions of the law. Employers would not be permitted to require documentation for the use of personal time, regardless of the reason for use. For the foreseeable use of personal time, employees could be required to provide up to 14 days prior notice; for unforeseeable use, employees could be required to provide notice as soon as practicable.

As is presently the case for sick and safe time under ESSTA, employers who already provide paid vacation or other paid time off to employees would not be required to provide additional personal time, so long as the other paid time off can be used for the same purposes and under the same conditions as personal time under the law.

### ***Expanded Protections for Leave Under ESSTA***

The bill would further expand protections for employees' use of leave under ESSTA:

- Presently, while new employees begin accruing leave under ESSTA at the start of employment, employers may restrict use of accrued time for up to 120 days. Under the bill, employers would only be able to restrict use of accrued time for up to 90 days after the start of employment.
- The bill would expand protections against retaliation for employees exercising their rights under ESSTA. Among other things, protections would apply in cases of good faith, but ultimately mistaken, allegations of violations of the law. Further, to prove retaliation, employees would need only have to show that protected activity under ESSTA was a "motivating factor" for an adverse employment action, as opposed to needing to show that the protected activity was the "but for" cause of such an action.
- In addition to remedies already available under ESSTA, the bill would provide for a penalty of up to \$500 "for each employee covered under an employer's official or unofficial policy or practice of not providing or refusing to allow the use of earned time" in violation of the law. The bill would further specify that all civil penalties under the law would be imposed on a per employee basis.
- The bill would empower the NYC corporation counsel to investigate potential violations of ESSTA and bring civil actions to enforce the law, whether on the basis of individual violations or a "pattern or practice" of violations of the law.

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If ultimately enacted, the amendments would take effect 120 days after becoming law. We will continue to monitor this bill and report on any further developments.

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