



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | info@abetterbalance.org | abetterbalance.org

FACT SHEET:

Domestic Workers' Right to Paid Sick Days in New York City

If you are a domestic worker—like a nanny, housekeeper, or home companion—the New York City Earned Sick Time Act (ESTA) gives you the right to take paid sick days. That means you can take time off work and still be paid if you or your family member is sick or needs go to the doctor. **If you are a domestic worker and have questions about the law, or problems at work related to sick time, call our hotline for FREE and confidential legal advice at 212-430-5982. Se habla Español.**

Am I covered?

The ESTA applies to almost all workers in NYC, not just domestic workers—but the rules for domestic workers are a little different than for everyone else. This fact sheet is *just* about the rules for domestic workers. You are a domestic worker under the ESTA if you meet the following requirements:

- You work in another person's home (not your own home) for someone who is not related to you.
- You have a regular schedule, even if it is part-time. For example: You work every Monday, 8am-3pm. You are not a “domestic worker” under this law if you only work every once in a while, with no regular schedule.
- You work in the five boroughs of New York City for more than 80 hours in a year.
- You **either**:
 - 1) Perform domestic work such as housekeeping, cooking, or caring for a child; **or**
 - 2) Work as a companion for a sick or elderly person **and** you are employed directly by the household or family using your services.
- **Please note:** If you perform companionship work through an employment agency and do not perform other domestic work (example: you take care of an elderly person and don't do other work around the house, like cleaning) you are **not** a domestic worker under the ESTA. You may still be covered as a non-domestic worker employee, so call us at 212-430-5982 to check!

Does immigration status matter under the ESTA?

No. You are covered by the ESTA regardless of your immigration status. Even undocumented domestic workers are covered by the law and entitled to paid sick days.

How many paid sick days do I get under the NYC law, and when do I get them?

The ESTA entitles you to up to 2 paid sick days on the 1-year anniversary of your first day of work with an employer, and up to 2 paid sick days every anniversary after that. If you do not use your paid sick days, they will “carry over” into the next year. It is important for domestic workers to know that they are ALSO covered under the Domestic Workers Bill of Rights, which is a statewide law that gives them up to an additional 3 paid “days of rest” that may be available for use when sick.

- **EXAMPLE:** Anna has been working as a nanny for the Smith family since January 14, 2009, and she meets the definition of “domestic worker” described above. The ESTA went into effect on April 1, 2014. On her **next** work anniversary date (January 14, 2015), Anna will get 2 paid sick days under the ESTA and 3 paid days of rest under the state Domestic Workers Bill of Rights. Next year, on Jan. 14, 2016, she will get *another* 2 paid sick days and 3 paid days of rest, if she

continues working the same average number of hours. If Anna does not use her 2 paid sick days in the next year, she will get to “carry over” the days, meaning that on Jan. 14, 2016 she will have a total of 4 paid sick days.

What can I use my paid sick days for?

You can use your paid sick days if you or your family member is sick, or if you or your family member need to go to the doctor or dentist for any type of medical care—such as an annual check-up, vaccination, medical test, or treatment. The law covers both mental and physical health conditions, as well as preventive care.

- **EXAMPLE:** Grace is pregnant and wakes up feeling very tired and sick to her stomach. She can take a paid sick day under the ESTA, even if she does not go to the doctor.

Which family members are covered by the ESTA?

The family members that are covered by the ESTA are: your child (even an adult child); grandchild; husband or wife; domestic partner; parent; grandparent; the child or parent of your spouse or domestic partner; and siblings. To be covered, domestic partners must be registered under the NYC Domestic Partnership Registry. Aunts, uncles, and cousins are *not* covered family members.

- **EXAMPLE:** John’s mother has a doctor’s appointment on Monday, and his aunt has an appointment on Tuesday. John would like to go to both appointments with his family members. John can take a paid sick day under the ESTA for Monday’s appointment, since his mother is a covered family member. He cannot take a paid sick day off under the ESTA for Tuesday’s appointment, however, since his aunt is not a covered family member.

What should I be paid when using sick time under the ESTA?

For each paid sick day, you must be paid at your regular rate of pay at the time you use your sick time. Since this can be confusing, domestic workers can call us at 212-430-5982 to discuss.

- Please note: domestic workers must be paid at least the New York State minimum wage when taking paid sick days under the ESTA.

Can my employer make me come into work or punish me for taking a paid sick day under the ESTA?

No. If your boss tells you to come into work when you try to take a paid sick day, or if you are punished for taking a paid sick day (for example, you are fired, threatened, or your hours are cut), call A Better Balance for help at 212-430-5982.

- You also cannot be required to find a replacement worker when you use a paid sick day under the ESTA.

When do I have to tell my employer that I need a paid sick day?

Under the ESTA, your employer can require you to give up to 7 days notice ahead of time, but **only** if you knew ahead of time that you would need the day off. If you did not know that you would need a paid sick day, you just have to let your employer know as soon as you can.

- **EXAMPLE:** Priya has a planned surgery next month. Priya’s employer can require her to provide notice that she needs a paid sick day up to 7 days before the surgery. If Priya wakes up



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with a fever next week, however, she does *not* need to give 7 days of notice; she is only required to give notice that she needs a paid sick day as soon as possible, so she can call out sick that day.

Do I have to provide my employer with a doctor’s note when I take a paid sick day?

Under the ESTA, an employer cannot require a doctor’s note when you take 1 paid sick day or even 2 paid sick days in a row. An employer **can** require a doctor’s note if you use your paid sick days for **more than 3 days** in a row. The note does not need to describe your health issue – only your need for the amount of sick time taken.

How is the ESTA different than the paid days of rest under the Domestic Workers Bill of Rights?

Under the Domestic Workers Bill of Rights—which has been law in New York State since 2010—you have the right to up to 3 paid days of rest per year **in addition to** up to 2 paid sick days under the ESTA. You will get your paid days of rest each year on the same day as when you get your paid sick days.

- EXAMPLE: Nadia has been working as a housekeeper for the Jones family since April 3, 2011. Nadia should have been earning 3 paid days of rest under the Domestic Workers Bill of Rights each year since her 1-year anniversary on April 3, 2012. Since ESTA went into effect in April, 2014, Nadia will also earn 2 paid sick days each year in addition to her 3 paid days of rest on her anniversary date.

What other rights do I have under the Domestic Workers Bill of Rights?

You can read more about the New York State Domestic Workers Bill of Rights at <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>. The Domestic Workers Bill of Rights provides many important labor protections, including:

- The right to 1 *unpaid* day of rest a week (don’t confuse this with the 3 *paid* days of rest that we mentioned above) and overtime if you agree to work on that day.
- The right to overtime pay after working 40 hours a week, or 44 hours a week if you live in your employer’s home.
- The right to be free from discrimination and harassment based on your sex, race, national origin, and other factors.
- If you think your employer is not obeying the Domestic Workers Bill of Rights, you can email the New York State Department of Labor’s Division of Labor Standards at DomesticWorker@labor.ny.gov with your question or your complaint. You can also call the Department of Labor at 1-888-525-2267.

Please note that the information in this fact sheet is not exhaustive or intended to constitute legal advice. It is possible that additional New York City Earned Sick Time Act or New York State Domestic Workers Bill of Rights provisions or rules not described here may apply to your specific circumstances.

Because the New York City Earned Sick Time Act is complicated, don’t forget to call us if you have any questions about your rights, or any problems at work related to sick time!

A Better Balance is here to give you FREE and confidential legal advice at 212-430-5982. Se habla Español.