

FACT SHEET:

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

If you are a domestic worker—like a nanny, housekeeper, or home companion—the New York City Earned Safe and Sick Time Act (ESSTA) gives you the right to take paid sick time. 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 FREE and confidential legal work-family legal helpline at 1-833-NEED-ABB. Se habla Español.**

Am I covered?

The ESSTA 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 ESSTA if you work directly for an individual or household and provide:

- Care for a child;
- Companionship for a sick, convalescing, or elderly person;
- Housekeeping; or
- Any other domestic service in a home or residence.

Please note: If you work for an agency, different rules under the ESSTA may apply. For more information, visit <https://www.abetterbalance.org/resources/know-your-rights-new-york-city-paid-sick-time/>.

Does immigration status matter under the ESSTA?

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

How much paid sick time do I get under the NYC law, and when do I get to use it?

The ESSTA entitles you to earn **1 hour** of paid sick time for every **30 hours** worked. You can use up to **40 hours** of sick time per year and your sick time must be paid. Beginning September 30, 2020, you start earning paid sick time immediately when you start working for your employer and you can use it as soon as it's earned. Prior to September 30, 2020, domestic workers were covered by the paid sick time law, but different rules around accrual and use applied. If you do not use your paid sick time, it will “carry over” into the next year.

What can I use my paid sick time for?

You can use your paid sick time 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. Additionally, you can use your sick time for certain non-medical needs that may

arise if you or your family member are a victim of domestic violence, a sexual offense, stalking, or human trafficking.

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

Which family members are covered by the ESSTA?

The family members that are covered by the ESSTA are: your child (including an adult child); grandchild; spouse; domestic partner; parent; grandparent; the child or parent of your spouse or domestic partner; siblings; any other blood relative (such as an aunt, cousin, etc.); or any other individual whose close association with you is the equivalent of a family relationship (such as a close friend who is like family, a significant other, etc.).

- **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 paid sick time under the ESSTA for Monday's appointment, since his mother is a covered family member *and* for Tuesday's appointment, since his aunt is also a covered family member.

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

For each paid sick day, you must be paid at your regular rate of pay at the time you use your sick time. Please note: domestic workers must be paid at least the New York State minimum wage when taking paid sick time under the ESSTA.

Can my employer make me come into work or punish me for taking paid sick time under the ESSTA?

No. If your boss tells you to come into work when you try to take paid sick time, or if you are punished for taking paid sick time (for example, you are fired, threatened, or your hours are cut), call A Better Balance for help at **1-833-NEED-ABB**.

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

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

Under the ESSTA, 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 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 paid sick time?

Under the ESSTA, 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

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more than 3 workdays in a row. The note does not need to describe your health issue – only your need for the amount of sick time taken. Additionally, if your employer requests a doctor’s note, they must reimburse you for any fee your health care provider charges you to provide documentation.

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

Under the Domestic Workers Bill of Rights, you have the right to 3 paid days of rest per year, which you receive on the anniversary of your first day of work. If you can use your paid days of rest for all the same reasons and under all the same conditions as you can use your earned sick time under the ESSTA, your days of rest may count against your earned sick time. However, if your paid days of rest do not meet all the requirements of the law (such as if your employer gives you a paid day off for a holiday that you must use on that day), they do not count against your earned sick time—meaning that your paid days of rest are in addition to your earned sick time rights. If you have questions, please call us at 1-833-NEED-ABB.

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 Safe and Sick Time Act or New York State Domestic Workers Bill of Rights provisions or rules not described here may apply to your specific circumstances.

If you need help using your rights or would like more information, call our free and confidential legal helpline at 1-833-NEED-ABB. Se habla Español.