



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

**BOROUGH PRESIDENT GALE A. BREWER
TESTIMONY TO THE DEPARTMENT OF CONSUMER
AFFAIRS PUBLIC HEARING ON PROPOSED RULES
APRIL 29, 2014**

Good morning, and thank you, Mr. Wong, for the opportunity to testify today on the proposed rules to clarify provisions in the “Earned Sick Time Act.” I’d first just like to take a moment to thank Mr. Wong. We have worked together on a range of issues over the years, and I have come to greatly appreciate his hard work and willingness to collaborate.

I’d like to recognize once again the efforts of advocates and colleagues who have worked tirelessly to pass both the original Paid Sick Leave legislation that I introduced as a City Councilmember, and the expansion signed into law this past February by Mayor de Blasio. According to an analysis by our friends at A Better Balance, as of April 1st, 3.4 million private-sector workers in New York City now have the fundamental right to a paid day off when they or a family member falls ill. This includes 1.2 million New Yorkers who had no access to paid sick time prior to the original law’s passage. This is an accomplishment we should all be proud of.

I’d like to commend the staff members at the Department of Consumer Affairs (DCA) for their efforts so far to ensure that both employers and employees have all the information they need to comply with the expanded Earned Sick Leave Act. I know that the agency is proactively reaching out to various business and commerce groups to train employers on the Act, answer their questions, and hear their concerns. I commend DCA for offering these trainings and materials in multiple languages.

The proposed rule changes being discussed today were no doubt borne out of DCA’s effort to identify and address concerns among businesses and workers. This good-faith effort is reflected in DCA’s thorough and ever-expanding FAQ section on the agency’s website, as well as in advertisements notifying New Yorkers of the new law placed throughout the City in subways and buses. Trainings, public hearings, and notifications such as these will continue to be vital to ensuring all employees and employers have the information they need in order to comply with, and understand the benefits of, the Earned Sick Leave Act.

Here in New York, we have the benefit of being able to learn from the experiences and best practices of several other cities that have already implemented



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

Earned Sick Time policies. I have spoken with elected officials, workers, administrators, and business organizations in San Francisco, Washington, D.C., and Seattle about their experience rolling out paid sick leave, and all highlight the need for continual cooperation and meaningful engagement of all involved. Some specific best practices identified by these individuals include: (1) using a variety of strategies to inform the public about the law, such as mailings, traditional and social media, community events, and advertisements; (2) responding to all queries from the public, no matter how many, and; (3) partnering with community groups and advocates to publicize the law. It appears DCA is already heeding much of this advice in our own roll out here in New York, but we should take efforts to maintain contact with our counterparts in these cities to continue benefiting from the best practices to come out of their experiences.

One specific problem identified in San Francisco's roll out centers on how to handle employee complaints against employers who, despite the law, have not instituted a workplace earned sick leave policy, and who are also not maintaining records. Without documentation, this situation makes it difficult for workers to prove how many days of earned sick pay they have been denied. To address this issue, our counterparts in San Francisco looked into national research that has shown that workers use, on average, 3 days of sick pay each year. San Francisco has officially adopted this 3-day average as a standard metric to help address violations in instances where there is no record keeping. San Francisco's 3-day metric is a commonsense solution I would urge DCA to consider as problems with lack of record keeping is likely to arise in New York as well.

Over the last several months, I have heard from many employers, particularly small business owners, who have shared their experiences and concerns with me and my staff regarding the Earned Sick Leave Act. Many of the concerns that I have heard from my constituents are being addressed in the proposed rules currently before the Agency, such as clarifying that the Earned Sick Time Act applies to employees regardless of immigration status, and allowing employers to require "reasonable notice" before using sick time when able. I appreciate that DCA has begun to clarify these rules, among many others.

As staff members at DCA know all too well, however, there is still much to do to ensure the full implementation of the Act. The City will need to continue being responsive to the concerns of those impacted by this important legislation. We can best address any potential problems with the cooperation, support, and input of all affected parties. It is within this spirit of cooperation that I would like to draw your attention to several additional concerns, some of which are not currently covered in the proposed rule clarifications being discussed today, that my staff and I have heard from businesses, workers, and advocacy groups:



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
 BOROUGH OF MANHATTAN

- **Notice of Employee Rights:** First, employers are required under the Act to provide the Notice of Employee Rights, created by DCA, to employees by May 1st of this year. Employers are encouraged to save a signed copy of the notice, for recording keeping purposes to provide proof of compliance with the law. However, there is currently no space available on this notice for the employee's signature and date. This seems as easy fix, and one I would encourage DCA to make.
- **Shift Swapping:** I have also heard there is some confusion as to the degree to which employers can encourage employees to "shift swap," rather than take a sick day. While the legislation clearly prohibits employers from requiring an employee to swap shifts with co-workers, there is currently no rule against allowing employees to do so voluntarily. Employers would like to know if or how this option can be discussed with employees without it appearing as if "shift-swapping" is being coerced.
- **On-Call Employees:** Another concern I have heard relates to whether or not sick pay is guaranteed to on-call employees. This concern centers on whether a paid sick day must be granted to an on-call employee who requests it, even if the employer does not need to officially call the employee into work. At the very least, it would seem that on-call workers should not be retaliated against or fired as a result of this Act if he or she is unavailable to work due to reasons covered by Earned Sick Time. I would urge DCA to clarify this rule.
- **Sick Time Abuse:** The proposed rules discussed today explicitly grant the right of employers to ask for written documentation of the need for sick pay once an employee is absent for more than three consecutive work days. I have heard some concerns regarding the potential abuse of sick days, given this rule, and how employers might be able to discipline employees who misuse the policy. The original intent of Earned Sick Pay was never to prevent employers from taking action to discipline workers who abuse the Earned Sick Pay policy, and DCA should clearly communicate this to employers.
- **Interns:** There have also been several concerns raised regarding unpaid interns, and whether businesses are required to give them leave under this law. As someone who has had over 1,000 interns over my 30 years in public office, the treatment of interns in the workplace is a very important issue to me. Just this past month, I introduced legislation with Councilmember Jimmy Vacca that was signed into law by Mayor de Blasio last week that explicitly protects all interns, whether paid or not, from discrimination or harassment in the workplace. Whether or not interns are paid, they too become ill, and must care for family members,



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

just like any other worker. It would therefore seem that interns should gain the right to earned sick leave under this Act as well, regardless of whether they are paid. I would urge DCA to make this rule clarification.

Thank you, again, for the opportunity to testify before you today. I look forward to continue working with DCA on the implementation of the Earned Sick Leave Act in our City, and the clarification of the rules surrounding them.