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***CONFIDENTIAL ATTORNEY-CLIENT  
PRIVILEGED MEMORANDUM***

**DATE:** March 5, 2014

**TO:** Hotel Association of New York City, Inc.  
Labor Relations Members  
General Managers, Controllers and Human Resources Directors

**FROM:** Kane Kessler, P.C.  
Labor and Employment Law Department

**RE:** Amendments to New York City Sick Leave Law

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Last year, we advised about the enactment of the New York City Earned Sick Time Act (“Act”), a law that would require New York City employers to provide employees with five (5) sick days each year, accrued as discussed below. (Please see enclosed memoranda dated July 1, 2013 and December 19, 2013.) On February 26, 2014, about a month before the Act’s effective date, the City Council passed a bill which would vastly expand the law’s coverage. The bill is on its way to Mayor De Blasio’s desk, and it is expected that the Mayor, who has been a strong advocate of providing sick time coverage to more New Yorkers, will sign the bill. The bill sets forth several significant amendments to the original Act which was passed last year. These changes are outlined below.

- **Coverage:** Initially, the Act required all employers (with the exception of certain manufacturing employers) with more than 15 employees to provide a minimum number of *paid* sick days, and all employers with fewer than 15 employees to provide a minimum number of *unpaid* sick days. This threshold has been lowered to five (5) employees for all employers, so employers with more than five (5) employees would now be obligated to abide by the *paid* sick time requirement. Employers with fewer than five (5) employees would still be required to provide a minimum number of *unpaid* sick days. Sick time under the Act, whether paid or unpaid, will accrue at the rate of one hour per every 30 hours of work, up to a maximum of 40 hours (typically 5 days) per calendar year.

- **Use of Sick Leave:** Employees would now be able to use earned sick time to care for grandchildren, grandparents, and siblings, in addition to the other family members already listed in the original Act (children, spouses, domestic partners, parents, in-laws, and parents of domestic partners).
- **Notice Posting:** As of the effective date of the Act, Employers must provide employees with a notice describing their rights under the Act in English and in the primary language spoken by that employee (provided that the Department of Consumer Affairs has created a notice in said language) at the commencement of employment. Employers may also post such notice in a conspicuous location accessible to employees. Sample notices will be accessible through the Department of Consumer Affairs' website. A representative from the Department has confirmed that although these notices are not yet available, they will be available prior to April 1, 2014.
- **Documentation:** Employers would be required to retain relevant documents for a period of three (3) years (increased from two (2) years).
- **Complaints:** The window for filing a complaint with the department for violations of the Act would be extended to two (2) years (increased from 270 days).
- **Civil Penalties:** The Department of Consumer Affairs ("Department") has the authority to enforce the provisions of the Act and may impose civil penalties for violations. The civil penalty for failure to provide proper notice under the Act is \$50 per employee. If an employee is not compensated for sick time, the Department can impose a penalty of three times the unpaid wages plus \$250 per violation. Penalties for failure to provide sick leave, retaliation and unlawful discharge range from \$500 to \$2,500 per violation, plus full back pay and possible reinstatement in the event of discharge. Penalties for other violations of the Act range from \$500 to \$1,000.
- **Effective Date:** The effective date of April 1, 2014 would apply to all employers, including employers of domestic employees. The Act passed last year staggered the effective date to allow smaller employers more time to comply with the provisions. However, the new law would establish a six (6) month grace period during which employers with fewer than 20 employees (including full-time, part-time, and temporary employees) would not be subject to civil penalties for inadvertent violations of the law.

All other provisions set forth by the original Act would remain unchanged. Because of the rapidly approaching effective date, employers should review their policies to ensure compliance with the law. If you have any questions about the Earned Sick Time Act, please do not hesitate to contact David Rothfeld, Judith Stoll, Lois Traub, Robert L. Sacks, Niki Franzitta or Alex Soric of the Firm's Labor & Employment practice group.

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***CONFIDENTIAL ATTORNEY-CLIENT***  
***PRIVILEGED MEMORANDUM***

**DATE:** December 19, 2013

**TO:** Hotel Association of New York City, Inc.  
Labor Relations Members  
General Managers, Controllers and Human Resources Directors

**FROM:** Kane Kessler, P.C.  
Labor and Employment Law Department

**RE:** New York City Sick Leave Law

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It appears likely that the economic conditions in New York City will meet the minimum requirements to allow the new Sick Leave Law to go into effect for New York City employers on April 1, 2014. The Sick Leave Law will mandate that employers with more than 15 employees provide employees with five (5) paid sick days per year. (See our more comprehensive discussion at [http://www.kaneessler.com/files/New\\_York\\_City\\_Sick\\_Leave\\_Act.pdf](http://www.kaneessler.com/files/New_York_City_Sick_Leave_Act.pdf).)

Because Hotels that are signatory to the Industry-Wide Agreement (“IWA”) already provide more paid sick days off (a total of eight (8)) than the minimum number of days required under the Sick Leave Law to most of their employees, those Hotels would meet the requirements of the new law. However, whereas the IWA does not require accrual of sick leave until the completion of one (1) year of continuous employment, the law requires that sick leave begin accruing from the first day of an employee’s employment. Therefore, Hotels will now have to begin accruing the minimum number of paid days off from day one of each employee’s employment.

Under the new law, sick leave accrues at the rate of one hour per 30 hours of work, up to a maximum of five (5) days per year. Because Hotels are already required under the IWA to provide three (3) paid personal days during the first year of employment, they need only add two (2) additional days for full-time employees (for part-time employees it may be less, since sick leave accrues at the rate stated above). Notably, employers are not required to allow employees to use sick leave until after the completion of 120 days of employment.

The Department of Labor will be publishing a form of notice that must be provided to all employees to inform them of their rights to sick leave. Once the form of notice is published, we will distribute it to New York City employers.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Niki J. Franzitta, Lois M. Traub, Alex Soric or Robert L. Sacks.

cc: Joseph E. Spinnato, Esq.  
Geoffrey A. Mills, Chairman

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***CONFIDENTIAL ATTORNEY-CLIENT***  
***PRIVILEGED MEMORANDUM***

**DATE:** July 1, 2013

**TO:** Kane Kessler  
Client with New York City Employees

**FROM:** Kane Kessler, P.C.  
Labor and Employment Law Department

**RE:** The New York City Sick Leave Act: Update: to be in effect April 1, 2014

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On June 27, 2013, the New York City Council overrode Mayor Bloomberg's veto of the Sick Leave Act (the "Act"). Therefore, after much political wrangling and a compromise addressing economic concerns which could delay the effective date, employers in New York City will be required to provide a minimum number of sick days per calendar year beginning as early as April 1, 2014.

The Act provides that all employers with 15 or more employees must provide a minimum amount of paid sick leave and all employees with fewer than 15 employees must provide a minimum amount of unpaid sick leave. For purposes of the Act, the number of employees employed by an employer includes all full-time, part-time and temporary employees (exempt and non-exempt). Where the number of employees fluctuates, the number will be determined by looking at the average number of employees per week over the preceding calendar year.

Under the Act, sick leave –whether paid or unpaid – will accrue at the rate of one hour per every 30 hours of work, up to a maximum of 40 hours (typically 5 days) per calendar year. For exempt employees, it will be presumed that employees work 40 hours per week for the purposes of calculating accrual of sick leave, unless they regularly work less than 40 hours per week. All time off, including vacation, personal days and similar time off, will count towards the minimum number of sick leave days provided by the employer. Sick leave begins to accrue on the first day of employment but an employer can prohibits its use until after the 120<sup>th</sup> day of employment.

Employers are not required to pay unused, accrued sick pay upon termination of employment. Unused sick leave can be carried over to the succeeding calendar year, but no employer is required to grant more than 40 hours of sick leave in any calendar year.

Sick leave (whether paid or unpaid) can be used for an employee's own illness, medical treatment or preventative medical care or to care for a family member who is ill, requires treatment or preventative medical care. A "family member" is a child, spouse, domestic partner, parent or in-law (including a parent of a domestic partner). Sick leave can also be used in the event the place of employment or the employee's child's school is closed due to a public health emergency. If leave is foreseeable, employees are required to give "reasonable" advance notice and when not foreseeable, as much notice as is practicable under the circumstances. Employees can be disciplined for using sick leave for purposes other than those intended by the Act. An employer may request medical documentation for an absence of more than 3 consecutive days. However, employees are not required to disclose the nature of their medical condition as a condition of obtaining sick leave.

Employees covered by a collective bargaining agreement (except in the construction and grocery industries) are exempt from the provisions of this Act provided that (1) the collective bargaining agreement expressly waives the provisions of this Act and (2) the collective bargaining agreement provides comparable benefits (including all forms of paid leave).

The Act prohibits retaliation against employees who request sick leave or complain about violations of the Act. All employees must receive a notice in writing at the commencement of their employment explaining their rights to sick leave. The notice, a form of which will be drafted by the Department of Labor ("DOL"), must be in the employee's primary language, provided it is one of seven (7) languages in which the DOL will prepare forms of notice. Records of sick leave use must be maintained for two (2) years.

The Act does not provide for a private right of action for violations of its provisions. However, employees may file complaints with the DOL within 270 days of a violation. If an employee is not compensated for sick time, DOL can impose a penalty of 3 times the unpaid wages plus \$250 per violation. Penalties for failure to provide sick leave, retaliation and unlawful discharge range from \$500 to \$2,500 per violation, plus full back pay and possible reinstatement in the event of discharge.

Due to the concern of some lawmakers about the effect of the Act on current economic conditions in New York City, the effective date of the Act is rather complicated. If on December 16, 2013, the Independent Budget Office ("IBO") determines that the most recent New York City Coincidental Economic Index (the "Index") as published by the Federal Reserve of New York is at or above the January 2012 level, then the effective dates for the Act are:

- For employer with 20 or more employees – April 1, 2014
- For employers with 15 -19 employees – October 1, 2015
- For employers with fewer than 15 employees who are required to provide unpaid leave – April 1, 2014.

If the Index is not at the January 2012 level on December 16, 2013, then the effective dates are:

- For employers with 20 or more employees – October 1, 2014
- For employers with 15-19 employers – April 1, 2016
- For unpaid leave – October 1, 2014

If on June 16, 2014, the Index is not at the January 2012 level but it is on December 16, 2014, then the effective dates are:

- For employers with 20 or more employers – April 1, 2015
- For employers with 15-19 employees – October 1, 2016
- For unpaid leave – April 1, 2015

If the Index is not at the January 2012 level on December 16, 2014, then the IBO shall make a determination every June and December and the effective date shall be the succeeding October or April, respectively, after the Index first reaches the January 2012 level.

Finally, for employees covered by a collective bargaining agreement in effect on the effective date above, then the Act takes effect upon the expiration of the collective bargaining agreement.

We will keep our clients informed of the effective dates as they become known.

If you have any questions about the Sick Leave Act, please do not hesitate to contact David Rothfeld, Judith Stoll, Lois Traub, Robert L. Sacks, Niki Franzitta or Alex Soric of the Firm's Labor & Employment practice group.