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CONFIDENTIAL ATTORNEY-CLIENT
PRIVILEGED MEMORANDUM

DATE: March 25, 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: New York City Earned Sick Time Act

The following is a comprehensive memorandum outlining the requirements of the New York City Earned Sick Time Act (“Act”) and its recent amendments.

Last June, the New York City Council overrode Mayor Bloomberg’s veto and passed the Act, a law which requires employers to provide employees with a minimum amount of sick time. On February 26, 2014, the City Council passed a bill which, if enacted, would amend the not yet effective Act and vastly expand its coverage.¹ As was expected, Mayor De Blasio signed the bill on March 20, 2014, and the potential changes we discussed earlier this month will be realized. The provisions of the Act, including the recent amendments, are summarized below.

- **Effective Date: April 1, 2014.**
- **Coverage:** Employers with five (5) or more employees (including all full-time, part-time, and temporary employees) must provide up to 40 hours of paid sick time each year, and employers with fewer than five (5) employees must provide up to 40 hours of unpaid sick time, accrued as discussed below.
- **Accrual:** 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 per calendar year. The following

¹ Our July 1, 2013 and March 5, 2014 memoranda on the Act and its potential amendments can be accessed through the following links: http://www.kanekessler.com/files/New_York_City_Sick_Leave_Act.pdf;
http://www.kanekessler.com/files/New_York_City_Sick_Leave_Act_Update_2014.pdf.

examples demonstrate the accrual calculations for an employee with a 40, 35, or 20 hour workweek:

- **40 hour workweek:** An employee who works 40 hours per week (eight (8) hours per day over five (5) days) would accrue 40 hours of sick time during a calendar year. This would amount to five (5) days of earned sick time.
 - **35 hour workweek:** An employee who works 35 hours per week (seven (7) hours per day over five (5) days) would accrue 40 hours of sick time during a calendar year. This would amount to five (5) days, *plus* an additional five (5) hours of earned sick time.
 - **20 hour workweek:** An employee who works 20 hours per week (four (4) hours per day over five (5) days) would accrue 35 hours of sick time. This would amount to eight (8) days *plus* an additional three (3) hours of earned sick time.
- **Paid Time Off:** 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.
 - **Entitlement:** Sick leave begins to accrue on the first day of employment, but an employer can prohibit its use until after the 120th day of employment.
 - **Use:** Sick leave (whether paid or unpaid) can be used for an employee’s own mental or physical 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), sibling (including half-siblings, step-siblings, or siblings related through adoption), grandchild or grandparent. 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. Employees can be disciplined for using sick leave for purposes other than those intended by the Act.
 - **Incremental Use:** Employees shall determine how much earned sick time they need to use. However, employers may set a reasonable minimum increment for the use of sick time, which shall be no greater than four (4) hours.
 - **Documentation:** An employer may request medical documentation for an absence of more than three (3) consecutive days. However, employees are not required to disclose the nature of their medical condition as a condition to obtaining sick leave.
 - **Notice:** If leave is foreseeable, employees are required to give “reasonable” advance notice; when the leave is not foreseeable, employees must give as much notice as is practicable under the circumstances.
 - **Payment Upon Termination/ Carryover:** An employee’s unused sick time shall be carried over from one year to the next, however, employers are not required to grant more than 40 hours of sick leave in any calendar year. For example, an employee who does not use any of his five (5) accrued sick days in one year would be entitled to those five (5) sick days at the beginning of the following calendar year, and would not have to wait to

accrue sick days using the method described above. However, the employer would not be required to provide the employee with any additional sick time. Unused sick time is not required to be carried over if an employee's unused sick time is paid out at the end of the calendar year and the employer provides the amount of sick time the employee would be entitled to under the Act on the first day of the following year (i.e. the employee does not have to accrue the time).

- **Collective Bargaining:** For employees covered by a collective bargaining agreement in effect on April 1, 2014, the Act takes effect upon the expiration of the collective bargaining agreement. When the Act takes effect, employees covered by a collective bargaining agreement (except in the construction and grocery industries) will be 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).
- **Notice of Rights Under Act:** 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 can be found on the Department of Consumer Affairs' website through the following link:
<http://www.nyc.gov/html/dca/downloads/pdf/MandatoryNotice.pdf>.
- **Recordkeeping:** Records of sick leave use must be maintained for three (3) years.
- **Retaliation:** The Act prohibits retaliation against employees who request sick leave or complain about violations of the Act.
- **Complaints:** The Act does not provide for a private right of action for violations of its provisions. However, employees may file complaints with the Department of Consumer Affairs within two (2) years of a violation.
- **Civil Penalties:** The Department of Consumer Affairs 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.
- **Grace Period:** The Act provides for a grace period of six months (until October 1, 2014) during which employers with fewer than 20 employees (including full-time, part-time, and temporary employees) will not be subject to civil penalties for inadvertent violations of the law.

Hotels that are signatory to the IWA are required to adjust current sick leave policies for employees covered by the IWA on April 1, 2014.

We recommend:

- Providing an additional two (2) days of paid leave to employees in their first year of employment, since the IWA already provides employees with three (3) paid personal days in their first year and eight (8) paid sick days after their first year of employment.
- Allowing employees to use their paid time for the “use” purposes mentioned above.

The Act will also take effect on April 1, 2014 for all non-union employees, so employers should review and modify their non-union policies immediately. Obviously, there will be many questions that arise following the implementation of the law. We will continue to monitor the law’s application. 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.

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