



**Cancer Screenings:**  
Workplace Policies to Improve  
Screening Rates

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## Public Health and Tobacco Policy Center

Contact:

Public Health Advocacy Institute  
at Northeastern University School of Law  
360 Huntington Ave, 117CU  
Boston, MA 02115  
Phone: 617-373-8494  
[tobacco@tobaccopolicycenter.org](mailto:tobacco@tobaccopolicycenter.org)

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## Increasing Preventive Cancer Screenings

Age-appropriate preventive screenings for breast, cervical and colorectal cancer convey a number of benefits. These preventive screenings can increase survivorship for the individual, reduce health care costs, and help maintain a healthy and productive population. The benefits of preventive breast, cervical, and colorectal cancer screenings for the individual are clear:

- Failure to obtain timely breast cancer screenings or follow-up care is associated with advanced tumor size and stage of disease at diagnosis.<sup>1</sup>
- Of women with advanced stage cervical cancers, 60-80% had not obtained a Pap screening in the past five years.<sup>2</sup>
- The five year survival rate is 90% for patients receiving a colorectal cancer diagnosis at an early, localized stage.<sup>3</sup> Further, it is estimated that early screening could have saved more than half of patients that were expected to die of colorectal cancer in 2013.<sup>4</sup>

If 90% of U.S. adults aged 50 and older were screened for colorectal cancer, an estimated 14,000 lives would be annually saved.<sup>5</sup> An estimated 620 lives would be annually saved if 90% of U.S. women ages 18-64 were screened for cervical cancer every 3 years.<sup>6</sup> An estimated 3,700 lives could be saved each year if 90% of U.S. women aged 40 and older were screened for breast cancer every two years.<sup>7</sup>

### What is Healthy People 2020?

*Healthy People 2020* are public health goals identified by the Federal Interagency Workgroup, which includes the U.S. Departments of Health and Human Services, Agriculture, Education, Housing and Urban Development, Justice, Interior, Veterans Affairs, and the Environmental Protection Agency.<sup>8</sup> Lead federal agencies drafted objectives for *Healthy People 2020* that were then made available for public comment and reviewed by the Federal Interagency Workgroup, which approved the final objectives.<sup>9</sup>

In addition to saving lives, preventive cancer screenings can reduce health care costs, improve workforce health, and reduce related business costs. Nationally, it is estimated that the cost of cancer totaled \$216.6 billion in 2009: \$86.6 billion in direct medical costs and \$130 billion in indirect mortality costs (cost of lost productivity to the individual due to premature death).<sup>10</sup> By 2020, medical expenditures for cancer care are estimated to reach at least \$158 billion.<sup>11</sup> Moreover, a cancer diagnosis is estimated to annually cost a business \$1,601 per diagnosed employee in lost productivity.<sup>12</sup>

Despite these benefits, individuals across the country fail to utilize these screenings to the full extent, and the population as a whole currently falls short of national targets. *Healthy People 2020*, a report published by the U.S. Department of Health and Human Services, set forth objectives for increasing

preventive cancer screening rates in the U.S.<sup>13</sup> The objectives include:

- 81.1% of women ages 50-74 receiving breast cancer screenings (only 73.7% obtained these screenings in 2008);
- 93% of women ages 21-65 receiving cervical cancer screenings (only 84.5% of obtained these screenings in 2008);
- 70.5% of adults ages 50-75 years receiving colorectal cancer screenings (only 52.1% obtained these screenings in 2008).<sup>14</sup>

The underutilization of preventive cancer screening rates is prevalent across the board, but is more pronounced among specific racial and ethnic groups, and also varies by income and education level. For example, colorectal cancer screening rates are lower among Asian, Hispanic, and Latino adults than among non-Hispanic white adults; further, as family income decreases so do colorectal cancer screening rates.<sup>15</sup> American Indian, Alaska Native, Asian, Hispanic and Latina women are less likely than white or African American women to have obtained a Pap screening in the past three years: further, women with a high school education or less are less likely than women with some college education or more to undergo a Pap test.<sup>16</sup> American Indian, Alaska Native, and Asian women are less likely than African American, and white women to have undergone a mammogram within the past two years.<sup>17</sup>

### New York State Cancer Screening Rates

The 2012-2017 New York State Comprehensive Cancer control Plan states that in 2010, 77% of women 40 and older were screened for breast cancer, 84% of women 18 and older were screened for cervical cancer, and 70% of adults 50 and older were screened for colorectal cancer.<sup>18</sup> By 2017 New York State aims to increase the number of individuals undergoing age-appropriate screenings for breast, cervical, and colorectal cancer by five percent for each screening.<sup>19</sup> These goals exceed those of *Healthy People 2020*.

### Cancer Screening Incentives through the Workplace

States and local communities may be interested in implementing policies designed to increase screening rates and address the racial and income disparities in existing rates. Where can large groups of disparate populations be reached to improve preventive cancer screening rates? The workplace setting might be that place.<sup>20</sup>

This report focuses on two workplace policies that may increase preventive cancer screening rates among employees: paid leave and incentives provided through workplace wellness programs. The first policy option encourages (or requires) employers to provide paid leave that employees may use to obtain preventive cancer screenings. The second, workplace wellness programs, focuses on increasing the rate at which employees undergo preventive cancer screenings by providing

incentives and relevant health education. These policies are consistent with both the National Prevention Strategy, which recommends employers adopt policies to increase the use of preventive care services among employees, and the Center for Disease Control's National Comprehensive Cancer Control Program, which recommends promoting cancer screenings.<sup>21</sup>

These policies are not mutually exclusive and can be implemented together to foster an environment supportive of employees taking charge of their health by obtaining age-appropriate preventive cancer screenings. These policies can also include broader public health objectives, such as paid leave for absences due to illness, or comprehensive wellness programs that encourage chronic disease management or engaging in other healthy behaviors; however, these more comprehensive approaches are not the focus of this report. Rather, we focus specifically on practices increasing cancer screening rates.



## Why Should Employers Be Interested in These Policies?

A focus on employee health and welfare means a healthier and productive workforce, not to mention the focus on prevention is in line with recent changes to federal law. These changes reflect a new emphasis on preventive health care and encourage employers to adopt policies designed to increase healthy behaviors among employees. Specifically, the Patient Protection and Affordable Care Act (ACA) represents a dynamic shift in the country's approach to health care, focusing on health insurance coverage for all and emphasizing the importance of preventive care to improve public health and limit costs.<sup>22</sup> There are important aspects of the ACA for employers and policymakers to consider when examining strategies to increase preventive screening rates.

First, the ACA requires that insurance plans offered by an employer (including self-insured plans) or an insurance carrier (including group or individual health insurance) provide full coverage, without cost-sharing by the employee, for certain preventive services that have demonstrated value for patients.<sup>23</sup> These include preventive colorectal, breast, and cervical cancer screenings.<sup>24</sup> The coverage of these preventive services applies to health plans beginning on or after January 1, 2014.<sup>25</sup> Employer-sponsored plans that fully cover the costs of preventive cancer screenings remove a barrier for many employees to obtain these screenings and other preventive care. This coverage, plus the ability to use paid leave time for screenings and possibly earn rewards while doing so, may further encourage employees to undergo these preventive screenings.<sup>26</sup>

The ACA also requires certain large employers to offer health insurance coverage to employees. The law prohibits employers with 200 or more full-time employees that already offered health insurance at the time the ACA was enacted to exclude new full-time employees. New employees must be offered the opportunity to enroll in the benefits on the same basis as existing employees.<sup>27</sup>

Beginning in 2015, employers with 100 or more employees must offer “minimum essential coverage” to all full-time employees (employers with 50-99 employees must do

the same as of 2016).<sup>28</sup> If an employer fails to provide a health plan to full-time employees, and one of those employees enrolls in a qualified individual health plan through a healthcare exchange and receives a premium credit or cost-sharing reduction for that plan, then the employer will pay a penalty.<sup>29</sup>

While employers with fewer than 50 full-time employees are exempt from the requirement to offer health insurance, the law encourages these smaller employers to offer insurance to their employees through incentives.

### ACA Term: Minimum Essential Coverage

The term “**minimum essential coverage**” describes the type of health coverage a person needs to meet the ACA’s individual mandate (the requirement that everyone, with a few exceptions, obtain health insurance). It does not require the inclusion of specific benefits in a policy, but instead refers to a process through which different types of insurance plans are approved to meet the individual mandate. For an employer-sponsored health plan to meet the minimum essential coverage standard, it must be group health insurance offered by or on behalf of an employer. The plan must be a governmental plan or any other plan or coverage in the small or large group market (including a grandfathered health plan offered in a group market) approved by the U.S. Department of Health and Human Services as meeting the standard.

Employer-sponsored plans are also required to be affordable and provide “**minimum value**.” This means that the plan must cover at least 60% of medical expenses, and the premium (for self-only coverage) must cost the employee no more than 9.5% of his or her gross wages.

### ACA Term: Grandfathered Plans

“Grandfathered” plans under the ACA are not required to provide full coverage for preventive services. These are plans that existed at the time the ACA was enacted (March 23, 2010). A job-based, grandfathered (i.e., group) health plan can enroll new employees and maintain its grandfathered status, while individual grandfathered plans (i.e., purchased by individuals outside of the employment setting) cannot enroll new members. A grandfathered plan loses its status and must thereafter comply with ACA requirements if the insurer changes the plan to:

1. Eliminate all or substantially all benefits to diagnose or treat a condition,
2. Increase a percentage of cost-sharing requirement,
3. Increase a fixed amount of cost-sharing requirement other than copayment,
4. Increase a fixed amount copayment,
5. Decrease contribution rate by employers and employee organizations, or
6. Change annual benefit limits



All small employers (with up to 50 employees) have access to Small Business Health Options Program Marketplaces (SHOP Marketplace), which increases their purchase power by pooling with other businesses. It permits small employers to buy better coverage at a lower cost.<sup>30</sup> Beginning in 2016, employers with up to 100 employees can participate in this program as well.<sup>31</sup> Small employers with 25 or fewer full-time employees are additionally eligible for an insurance tax credit.<sup>32</sup> Beginning in tax year 2014, the maximum credit will be 50% of premiums paid by eligible employers.<sup>33</sup> To be eligible for the tax credit, a small employer must pay at least 50% of the cost of single health care coverage (as opposed to family coverage) for its employees purchased through the SHOP Marketplace.<sup>34</sup> Further, employees of the employer must earn average wages of less than \$50,000 per year.<sup>35</sup>

### What is the SHOP Marketplace?

The SHOP Marketplace is a program that assists small businesses in providing health coverage to their employees. The marketplace is offered by some states, and by the federal government for employers in states that do not administer a marketplace. It allows employers to choose from various levels of coverage and enables them to start coverage at any time.<sup>36</sup>

New York State administers a marketplace called the New York State of Health Small Business Marketplace available to small employers in New York.<sup>37</sup>

In addition, the ACA established funding mechanisms to help employers implement policies that encourage a healthier workforce. First, a grant program assists small employers with the implementation of comprehensive workplace wellness

programs (i.e., programs designed to improve health by encouraging employee healthy behaviors, including chronic disease management, physical activity and proper nutrition).<sup>38</sup> Eligible employers are those with fewer than 100 employees working 25 or more hours a week and that did not provide a workplace wellness program as of the date of the ACA was enacted.<sup>39</sup> The ACA authorizes \$200 million to fund these grants for fiscal years 2011 through 2015.<sup>40</sup>

The ACA also established the Prevention and Public Health Fund (the Fund), administered by the U.S. Department of Health and Human Services (HHS) that “provide(s) for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public sector health care costs.”<sup>41</sup> Senate and House Appropriation committees may transfer money from the Fund to eligible activities, including other programs established by the ACA.<sup>42</sup> Over the past years the Fund has allocated significant funds (\$10 million in FY2012) to the CDC to carry out its workplace wellness programs, which aim to improve the health of employees using science-based programs, policies, and practices in the workplace setting for both chronic disease prevention and health promotion.<sup>43</sup> The CDC’s Work@Health program, discussed in more detail under the Workplace Wellness section of this report, was one of the programs supported by the Fund.<sup>44</sup> The CDC eliminated workplace wellness as a budget item for FY2014 and will incorporate the lessons learned from the program into its ongoing chronic disease prevention programs.<sup>45</sup>

In sum, the ACA encourages or requires employers to offer health care coverage to

employees. It also supports the implementation and evaluation of employer programs designed to improve workforce health. Not only will such policies maintain a healthier workforce, but they should also reduce overall healthcare costs, which benefits employers' bottom lines.

## Benefits of Paid Leave

The availability of paid time off from work to obtain preventive cancer screenings or other preventive healthcare services encourages employees to see a doctor before they develop a serious illness.<sup>46</sup> Studies have identified a positive relationship between paid leave benefits and both undergoing preventive cancer screenings and making routine medical visits.<sup>47</sup> This is likely because paid leave alleviates employee concerns about lost wages as a result of taking time to get screened.<sup>48</sup>

Coordinating and expanding access to paid leave benefits for employees is an example of removing a structural barrier to the receipt of preventive care.<sup>49</sup> Communities can require or encourage employers to adopt paid leave policies for their employees. When promoted and used, these policies are likely to not only improve overall public health, but may potentially reduce certain

disparities (discussed below) among those who obtain preventive cancer screenings.

## Paid Sick Leave and Preventive Cancer Screenings

Studies have found that paid sick leave benefits encourage regular visits to primary care physicians and routine preventive cancer screenings. A 2012 study found a positive association between access to paid sick leave and medical care visits and cancer screenings.<sup>50</sup> The researchers concluded that lack of access to paid sick leave is a potential barrier to obtaining preventive cancer screenings (mammography, Pap test, and endoscopy) at recommended intervals.<sup>51</sup> In another study, Cook and colleagues investigated access to paid sick leave and its association with employees' primary care and emergency department use.<sup>52</sup> The study found that access to paid sick days was "significantly associated" with increased outpatient care (office visits with a medical provider as opposed to emergency department visits).<sup>53</sup> Notably, patients are more likely to obtain cancer screenings based on recommendations from primary care providers, which suggests that access to paid sick leave may positively influence cancer screening rates.<sup>54</sup>

## Paid Leave for Screenings or Broad Paid Sick Leave

For the discussion of paid leave, this report will use two terms: "paid sick leave" and "paid leave". "Paid leave" refers to any policy that provides paid hours off that may be used for breast, cervical and/or colorectal cancer screenings. "Paid sick leave" refers to a broad employer policy that provides paid leave not only for cancer screenings, but for other reasons, including time off due to employee illness, care of dependents, and other employee needs.

The research discussed and examples given are primarily related to broad paid sick leave benefits. We extrapolate from these research results and apply the lessons learned to paid leave benefits that may be used for cancer screenings (be it a narrow policy providing time off *only* for cancer screenings, or part of a broader policy, providing paid time off for a variety of reasons).

## Paid Sick Leave and Disparate Rates in Preventive Cancer Screenings

While paid sick leave policies improve utilization of preventive medical care and, as a result may improve cancer screening rates, significant disparities exist in access to paid sick leave benefits. These disparities exist at the national level and throughout New York State. Some of these disparities in access to paid sick leave benefits mirror those seen in preventive cancer screening rates. The Cook study found that individuals with higher education, higher income, and higher-status occupations (e.g. managerial and professional occupations) were more likely to have access to paid sick days, while those with lower income, education level, or occupational status are less likely to have access to paid sick days.<sup>55</sup> In the private sector, on average, 39% of workers do not earn paid sick leave—with employees who are part-time or low income the least likely to have paid sick leave.<sup>56</sup> Recent data from the U.S. Bureau of Labor Statistics demonstrates that in the private sector:

- 88% of workers classified as “management, business, and financial” earn paid sick leave.
- Only 20% and 30% of private sector employees in the lowest 10% and 25% of wage categories have access to paid sick leave, respectively,<sup>57</sup> compared to 87% in the highest 10% of wage categories.<sup>58</sup>
- Only 24% of part-time workers are eligible for paid sick leave benefits, compared to 74% of full-time workers.<sup>59</sup>

- Only 51% of employees of small businesses (1 to 99 employees) earn paid sick leave, compared to 72% of employees of medium and large businesses.<sup>60</sup>

### Why don't employees just use other paid leave when sick?

Low income workers are more likely to be without any form of paid leave and, even if vacation leave is provided, they may be unable to use such leave for illness due to advanced notice requirements.<sup>61</sup> Full-time workers are significantly more likely than part-time workers to earn paid vacation and holidays in both the private and public sector.<sup>62</sup> Further, statistics from the Department of Labor indicate that access to other forms of paid leave suffer similar disparities as access to paid sick leave. Data show the same significant disparity exists between high- and low-wage earners.<sup>63</sup>

In the U.S., 89% of state and local government employees earned paid sick leave in 2013.<sup>64</sup> However, these employees are not immune to disparate access to paid sick leave:

- Only 41% of part-time public employees have access to paid sick leave, compared to 98% of full-time employees.<sup>65</sup>
- Only 62% of the lowest 10% of wage earners had access to paid sick leave, while 98% of the highest 10% of wage earners in the public sector had access to paid sick leave.<sup>66</sup>

### The Larger Impact of Low Wage + No Sick Leave Benefits

The fact that low-wage earners are less likely to have access to paid sick leave results in particular hardship. Households under economic stress may be unable to afford to lose pay, even when faced with the employee's or her dependent's illness.<sup>67</sup> For example, if a single, head-of-household worker earning an average of \$10 per hour with two dependent children misses three or more days of work without paid sick leave, the family would fall below the poverty line.<sup>68</sup>

The disparities in access to paid sick leave in the U.S. extend beyond employment status and exist among different racial and ethnic groups, and between men and women. One study found that Latino workers were significantly less likely to earn paid sick leave (58% without leave) than African American (44%) and white (40%) workers.<sup>69</sup> Finally, women are more likely to occupy low-wage and part-time jobs and, as a result, are less likely to earn paid sick leave.<sup>70</sup>

### Increasing Paid Leave for Private Sector Employees

A community can require employers in their jurisdiction to provide paid leave (a mandatory policy) through adopting a law or regulation or encourage the adoption of paid leave (a voluntary policy) through community-sponsored incentives for preventive screenings. A mandatory policy can be implemented at the state, county or local level through the adoption of a law or regulation. Similarly, any level of government (or a non-governmental community group or partnership) could incentivize the adoption of a voluntary policy by private businesses.

### Current Examples of Mandatory Paid Sick Leave Policies

Several cities and one state require employers to provide paid sick leave. Common elements of these requirements include:

- Accrual of leave based on the number of hours worked;
- Cap on number of accrued hours;
- Provide broad paid sick leave, permitting use for cancer screenings

### Public Health Benefits of Paid Sick Leave

A paid sick leave policy conveys benefits beyond the potential to reduce disparities in preventive cancer screenings. Without paid sick leave, employees are more likely to go to work sick and spread illness to co-workers, resulting in a workplace that is sick for a longer period of time.<sup>141</sup> A sick workforce is less productive and effective than a healthy workforce; one study estimates that "presenteeism" (being present but less productive due to illness) costs the national economy \$160 billion annually (more than employee absenteeism).<sup>142</sup> Providing paid sick leave also reduces employee turnover and, subsequently, reduces employer costs to advertise, interview, and train replacement employees.<sup>143</sup> Additionally, both employers and employees may realize health care costs savings; those without paid sick leave are more likely to visit the emergency department as a result of being unable to take time for routine or preventive medical appointments, resulting in higher health insurance costs.<sup>144</sup>

as well as other health-related reasons (e.g., illness of dependent or domestic violence services;

- Require employer record-keeping to track effectiveness and assist enforcement agencies;
- Anti-retaliation or interference provisions; and
- Require advanced notice for foreseeable employee absences or documentation for extended absences

**By the Numbers**

In New York State, only 62% of private sector employees have access to paid sick leave.<sup>75</sup> It is estimated that 2.5 million New Yorkers are without paid sick leave in the private sector.<sup>76</sup> The New York City’s Earned Sick Time Act (discussed below) is estimated to provide another 1 million workers with paid sick leave.<sup>77</sup>

**TABLE 1: MANDATORY PAID SICK LEAVE POLICIES**

	Allowed Use	Time Provided	Additional Provisions
San Francisco Paid Sick Leave Ordinance (PSLO) <sup>78</sup> (February 2007)	Employee’s personal health Health of immediate family member	1 hour paid sick leave for every 30 hrs. worked  72 hour cap for most employers  40 hr. cap for employers with <10 employees	Posted notice in English, Spanish, Chinese and language spoken by at least five percent of employees
Washington, D.C. Accrued Safe and Sick Leave Act <sup>79</sup> (2008)	Employee’s personal health. Health of immediate family member  Social or legal services for stalking, domestic violence, or sexual abuse of employee or family member	Employer with 100 or more employees: 1 hr. for every 37 hrs. worked, 7 day cap  Employers with 25-99: 1 hr. for every 43 hrs. worked, 5 day cap  Employer with 24 or less: 1 hr. for every 87 worked, 3 day cap	Excludes wait staff and bartenders working for combination of wages and tips
Seattle Paid Sick Time & Paid Safe Time Ordinance <sup>80</sup> (2011)	Employee’s personal health Health of immediate family member  Closure of business by public official  Care for child during school closure Services related to domestic violence, sexual assault, or stalking	Tier 1 Employer: 4-49 employees Tier 2: 50-249 Tier 3: 250+  Tier 1 & 2: 1 hr. paid leave per 40 hrs. Tier 1 is capped at 40 hrs. Tier 2 is capped at 56 hrs.  Tier 3 employers provide 1 hr. per 30 hrs. worked. Tier 3 is capped at 72 hrs.	2 year exemption for new Tier 1 and 2 employers  Notification of available time each time wages are paid

<p>Portland, Oregon's Protected Sick Time <sup>81</sup> (2013)</p>	<p>Employee's personal health</p> <p>Health of immediate family member</p> <p>Purposes related to domestic violence, harassment, sexual assault, or stalking</p> <p>Closure of business, or school or child care by order of public official</p> <p>Care for family member when determined that family member's presence jeopardizes community health</p> <p>Absence due to law or regulation that excludes employee from work for health reasons</p>	<p>Employers with 6 or more employees: 1 hr. for every 30 hrs. worked <b>paid</b> leave</p> <p>Employers with 5 or less employees: 1 hr. for every 30 hrs. worked <b>unpaid</b> leave</p> <p>Capped at 40 hrs.</p>	<p>Specifies those who receive base wage plus piece rate, tip, or commission earn paid sick leave based on base wage</p> <p>Provides that the city is to develop and implement an outreach program for employers and employees about the requirements of the chapter</p>
<p>New York City's Earned Sick Time Act<sup>82</sup> (2013)</p>	<p>Employee's personal health</p> <p>Health of immediate family member</p> <p>Closure of business, or school or child care by order of public official</p>	<p>Sick leave provided at a rate of 1 hr. for every 30 hrs. worked</p> <p>Employers with 5 or more employees: effective immediately, paid</p> <p>Employers with 5 or fewer employees: unpaid sick leave</p> <p>Capped at 40 hrs.</p>	<p>Applies to employers of domestic workers</p>
<p>Jersey City Paid Sick Time Ordinance <sup>83</sup> (2013)</p>	<p>Employee's personal health</p> <p>Health of immediately family member</p> <p>Closure of business by order of public health official</p> <p>Care for child during school closure</p> <p>Care for family member when determined that family member's presence jeopardizes community health</p>	<p>Employees receive 1hr leave per 30 hrs. worked</p> <p>Employers with 10 or more employees must provide paid leave with 40 hr. cap</p> <p>Employers with less than 10 employees provide unpaid sick time.</p>	<p>Specifically states the city will contract to have a research study to measure economic and health impact but a competent research institution</p>

<p>Newark New Jersey<sup>84</sup> (2014)</p>	<p>Employee’s personal health</p> <p>Health of immediate family member</p> <p>Closure of business by order of public health official</p> <p>Care for child during school closure</p> <p>Care for family member when determined that family member’s presence jeopardizes community health</p>	<p>Employees receive 1hr leave per 30 hrs. worked</p> <p>Employers with 10 or more employees must provide paid leave with 40 hr. cap</p> <p>Employers with less than 10 employees must provide paid leave with 24 hr. cap</p>	<p>Specifically states that employers with less than 10 employees who are child care workers, home health care workers, and food service are required to provide up to 40 hrs. paid sick leave instead of 24 hrs.</p>
<p>Connecticut Paid Sick Leave General Statute<sup>85</sup> (2011)</p>	<p>Employee’s personal health</p> <p>Health of immediate family member</p> <p>For health care, mental care, social services, legal proceedings when employee victim of family violence or sexual assault</p>	<p>Employers with <b>50 or more</b> employees in the state. Provide 1 hr. per 40 hrs. worked to <b>service workers</b>, capped at 40 hours per year</p>	<p>Provided to employees defined as “service workers”</p> <p>Applies to employees of state and local governments</p> <p>Excludes certain manufacturers</p>

## New York City

The New York City Council adopted the Earned Sick Time Act (Act) in May 2013 (expanded in February 2014).<sup>86</sup> The Act requires employers to provide paid (and unpaid) sick leave which may be used by employees in a variety of circumstances, including:

- Employee's personal health and preventive care;
- A family member's personal health or preventive care;<sup>87</sup>
- Closure of employee's place of work by public health official;
- Employee's need for time off to care for a child as a result of school or childcare provider being closed by public health official.<sup>88</sup>

The Act requires that employers of five or more employees permit employees to earn paid sick leave at a rate of one hour for every 30 hours worked.<sup>89</sup> The Act is effective April 1, 2014, with existing employees able to begin accrual of sick time on that date.<sup>90</sup> Employers with fewer than five employees are required to provide *unpaid* sick leave as of April 1, 2014, and are not required to provide paid sick leave.<sup>91</sup> The law caps accrued paid (and unpaid) leave for each employee at 40 hours per calendar year.<sup>92</sup> Most employees working more than 80 hours per year in New York City on a full- or part-time basis are eligible to earn leave.<sup>93</sup> Certain employees are exempt from eligibility, however, such as those working as part of a "work experience program" and government employees (at the federal, state, and local level), among others.<sup>94</sup> The law also allows employees to negotiate with employers for additional work hours in lieu of using accrued sick time.<sup>95</sup>

## Making up the Hours

An employee may wish to avoid using paid leave, and instead work extra hours to make up for time off. Under the New York City law, employers and employees may *voluntarily* agree to such an arrangement, within restrictions. For example, these additional hours may be restricted by the employer to the seven days immediately before or after the expected leave.<sup>96</sup> Additionally, compensation paid to the employee must comply with applicable federal, state, and local labor laws<sup>97</sup> (e.g., state or federal overtime pay for hours exceeding 40 in a given week).<sup>98</sup>

The Act also applies to employers of domestic workers<sup>99</sup>, and (to a limited extent) employees covered by collective bargaining agreements (CBA).<sup>100</sup> Under New York's 2010 Domestic Workers' Bill of Rights, domestic workers are entitled to three paid days of rest after one year of employment.<sup>101</sup> The Earned Sick Time Act requires employers to provide domestic workers two additional days to use as sick leave, also earned after one year of employment.<sup>102</sup> The law becomes effective for most employees covered by a CBA on the date their existing CBA ends, unless the new CBA expressly waives the Act and provides a comparable benefit.<sup>103</sup>

The Act is designed to protect the interests of both employers and employees. For example, employers are permitted to require reasonable advanced notice from the employee if an employee's leave is foreseeable,<sup>104</sup> and may require "reasonable documentation" for sick time exceeding more than three consecutive workdays.<sup>105</sup> Moreover, employers that already provide paid or unpaid leave



benefits meeting the minimum requirements of this law are exempt from the Act.<sup>106</sup>

To minimize obstacles to employee utilization of sick leave, the law prohibits employers from requiring an employee to find a replacement worker to cover his or her shift as a condition of using sick leave.<sup>107</sup> The law also prohibits employer retaliation or interference with an employee's use of sick time.<sup>108</sup>

Additionally, if an employee transfers to another division of the same employer within New York City, that employee is entitled to any sick time accrued at the prior division.<sup>109</sup> If an employee leaves the employer and is rehired within six months, the employer must reinstate the unused accrued sick leave.<sup>110</sup>

To assist enforcement agencies, the Act requires employers to maintain records for three years documenting compliance with the law and allow access to these records by the Department of Consumer Affairs or any department the mayor may designate.<sup>111</sup> This provision also ensures the city's Independent Budget Office has the information necessary to evaluate the costs and benefits of the Act including, when possible, data related to wage rates, employment rates, business start-up failures, expenses and revenues, infectious disease rates, and compare these New York City data with surrounding counties and comparable large cities that do not offer paid sick leave.<sup>112</sup> The Office is required to report its findings no later than 30 months after the law become effective.<sup>113</sup>

## Business Concerns

As discussed above, paid sick leave is associated with increased use of preventive screenings and wellness visits, which makes early detection and effective treatment possible.<sup>114</sup> Early detection and treatment not only lead to better outcomes but also reduce overall health care costs for both the employer and employee.<sup>115</sup> According to researchers, these benefits outweigh the cost of providing leave to undergo preventive screenings.<sup>116</sup>

Many businesses recognize the benefits of paid sick leave and voluntarily provide it. Some businesses favor paid sick leave laws, citing better retention of loyal and hardworking employees,<sup>117</sup> fairness to those who work for them,<sup>118</sup> and a healthier, more productive workforce.<sup>119</sup> However, the business community is not united in support of paid leave mandates. New business regulations often elicit knee-jerk opposition from those who assume regulation equates with increased net costs for business. Opponents to past efforts to mandate paid leave have made dire predictions about the impact on business and the local economy. For example, opponents have claimed that due to increased costs associated with paid leave, employers would be forced to lay-off employees, reduce wages or shut down their business entirely.<sup>120</sup>

Existing data on paid sick leave requirements belie these "doomsday" predictions for local business. In 2013, the Washington, D.C. Auditor evaluated the District's 2008 Accrued Safe and Sick Leave Act, which requires certain District employers to provide paid sick leave to their employees. Through the evaluation, the Auditor surveyed local business owners to assess the law's economic

impact.<sup>121</sup> Respondents overwhelmingly (87.5%) reported the new law would *not* cause them to move their businesses from the District of Columbia.<sup>122</sup> Of all survey respondents, 50% had not provided paid sick leave prior to the effective date of the Act; after the Act became effective, 68% of the respondents offered paid sick leave.<sup>123</sup> In addition, subsequent interviews with business owners revealed that the Act did not discourage them from establishing businesses in the District nor encourage them to move their businesses from the District.<sup>124</sup>

### Fear of Abuse

Some opponents argue that providing paid sick leave will result in workers taking unnecessary sick leave.<sup>125</sup> However, a study of San Francisco's Paid Sick Leave Ordinance found the median number of sick days used by employees was only three (less than the 5-9 days available to employees).<sup>126</sup> Moreover, a quarter of eligible employees did not use any paid sick leave earned during the preceding year.<sup>127</sup> Notwithstanding this low use rate, one out of eight workers reported that the ordinance reduced presenteeism (sick but on the job) in their workplace.<sup>128</sup>

Main Street Alliance of Washington assessed the preliminary economic impact of Seattle's 2011 paid sick leave ordinance using various measures.<sup>129</sup> The Alliance's 2013 report found that King County, in which Seattle is located, recovered more jobs than it lost during the recession, while Washington State as a whole had not.<sup>130</sup> Specifically, King County experienced accelerated growth in retail

and food and beverage jobs.<sup>131</sup> While the Alliance could not directly tie county job growth to job growth in Seattle, Seattle typically makes up 48% of accommodation and food service jobs and 37% of retail jobs in King County.<sup>132</sup> The Alliance therefore reasoned that the growth seen in King County reflected growth in Seattle.<sup>133</sup> The Alliance also noted taxable retail sales in Seattle increased after the city implemented its paid leave law.<sup>134</sup> The report concluded that this review of preliminary data demonstrated that the negative economic impact predicted by opponents of the paid sick leave requirement did not materialize, at least as an immediate result of the law. The report acknowledged that the assessment was "extremely preliminary," and suggested more substantial conclusions on the ordinance's impact could be assessed at a later date.<sup>135</sup>

In sum, as with any new business regulation, business interests are likely to be divided. These particular types of regulations are too new to precisely evaluate their impact on business costs—though preliminary research demonstrates these measures are unlikely to create hardship for local business. It is therefore important for communities to focus on the public health benefits of paid leave, and to assess their business community to determine the type of policy that best addresses the community's needs.

### Incentivizing Adoption of Paid Leave Policies

Some communities may not be ready for, or interested, in mandating paid leave by businesses. As an alternative, a community may incentivize businesses to

voluntarily adopt a paid leave policy. Incentives might be offered through a community partnership or program, or by the local government. Such incentives could allow communities to target specific businesses or categories of employees (for example, the service industry or part-time or low-income workers) that may benefit the most from paid leave.

Communities may be creative with incentives promoting a voluntary paid leave policy and pursue options tailored to their jurisdiction. For example, local government can coordinate with local public health or other community organizations and together formulate incentives attractive to specific businesses or neighborhoods. Incentives could comprise free publicity, special recognition, or promotion of companies that adopt paid leave policies as “employee friendly” to drive community support of those businesses. Local government could also amend local licensing or permitting laws to include reduced fees, streamlined approval processes, or other incentives to applicants providing paid leave to employees.

### Expanding Paid Leave Benefits in the Public Sector

Communities in New York may also expand the availability of paid leave for preventive cancer screenings to public employees. Currently, state law provides four hours of paid leave for breast or prostate cancer screenings (separate from any other sick, vacation or personal leave benefits).<sup>136</sup> The state law applies to a range of positions including, but not limited to:

- Public officers;
- Employees of the state, any county, and any municipality;
- Employees of certain educational institutions and districts;
- Employees of any public authority or public benefit corporation; and
- Employees of employers participating in the New York state and local employees’ retirement system or state teachers’ retirement system.<sup>137</sup>

County and local governments could expand these benefits to include other cancer screenings (i.e., colorectal and cervical) for their own employees, even without state action.

### Local Expansion of Benefits: Examples

In October 2013, the Broome County legislature unanimously passed a resolution providing four hours of paid leave for colorectal screenings to county employees.<sup>138</sup> It became effective immediately.<sup>139</sup> While four hours may be insufficient for a complete screening, the availability of time outside of other leave could be an incentive for county employees to obtain this diagnostic test, especially for those able to supplement the four hours of leave available with other leave benefits.<sup>140</sup> The resolution will benefit all of Broome County’s estimated 2,500 employees.<sup>141</sup>

Advocates in Broome County credit the successful implementation of the law to coordination among various county offices, including the county’s Health Department, Executive Office, Personnel Department, and most importantly, the Broome County legislature.<sup>142</sup> Moreover, they suggest that an emphasis on

educating the community and decision makers about the benefits of preventive colorectal cancer screening and a very supportive county executive were vital to getting the resolution passed.<sup>143</sup> Soon after Broome County passed their resolution, the town of Conklin (located within Broome County) passed a similar resolution to change employee policy to provide four hours of paid leave per screening for colon, breast, and prostate cancer.<sup>144</sup>

Outside of New York, the federal government and the city of Boston, Massachusetts have implemented public employee paid leave for specific screenings. Both policies provide employees four hours of annual leave for a range of preventive cancer screenings.<sup>145</sup>

## Legal Considerations for Employer Paid Leave Policies

The State of New York possesses broad “police powers” to promote the public health and welfare of its residents. Through state law, New York has conveyed its police powers to local governments (counties, cities, towns and villages), giving them the authority to regulate for the health, safety, and well-being of their residents.<sup>146</sup> Laws enacted using this police power must be consistent with the state’s constitution and general laws and must have a rational relationship with a legitimate government interest.<sup>147</sup> In this case, because paid leave requirements for private employers seek to improve public health, such laws likely fit within this grant of police power.<sup>148</sup> The state has also authorized counties, cities, towns and villages to regulate workplace

hours and compensation for the protection, welfare, and safety of their own public officers and employees.<sup>149</sup>

While local governments have the authority to adopt paid leave requirements or provide incentives for the voluntary adoption of paid leave policies, they must be mindful of specific laws and limiters when crafting a policy. This next section will highlight common legal issues relevant to communities considering paid leave policies.

### Preemption

While state and local police powers are broadly interpreted, there are limits to the scope of this power. Specifically, local law cannot conflict or interfere with state or federal law regulating the same subject matter.<sup>150</sup> In New York, a local law can be preempted (prohibited) if it is in direct conflict with state or federal law or attempts to regulate an area over which the state or federal government has established exclusive control (i.e., control to the exclusion of local regulation).<sup>151</sup>

### New York State Law Preemption

A community will want to be mindful of preemption when crafting a policy so the local law does not conflict or interfere with state or federal law. There seemingly is no current New York State law likely to preempt a local paid leave policy applying to the private sector. While the state Minimum Wage Act governs minimum compensation and benefit requirements, it does so for the purpose of ensuring adequate wages for employees to provide for their families;<sup>152</sup> The Act does not touch upon wage supplements, and thus

is unlikely to conflict with a local paid leave mandate.<sup>153</sup>

Similarly, a county or local policy providing paid leave to public employees may be drafted without conflicting with state law. State law does provide for four hours paid leave for breast and prostate cancer to those employed in public service. However, the New York law neither expressly limits local authority to provide this benefit to its civil service workers, nor implies intent to do so.<sup>154</sup> Accordingly, there is little merit to standard preemption claims that the state specifically authorized this leave to the exclusion of more generous leave (thus prohibiting local expansion of benefits).<sup>155</sup> Therefore, a local law that provides additional paid leave for preventive cancer screenings should not be read to conflict with this law.<sup>156</sup>

### Federal Law Preemption

Mandating paid leave in either the public or private sector is similarly unlikely to be found preempted by federal law. The Family Medical Leave Act (FMLA) currently requires public agencies and private employers with 50 employees or more to provide a specific amount of unpaid leave per year and entitles employees to return to their job or an equivalent position at the end of FMLA leave.<sup>157</sup> This leave can be used for certain qualifying conditions, including, but not limited to, the birth or adoption of a child, and care for immediate family members with serious health conditions.<sup>158</sup> Importantly, the law explicitly permits states to provide more generous family or medical leave.<sup>159</sup>

### Employment Retirement Income & Security Act

The Employment Retirement Income Security Act (ERISA) establishes minimum standards for certain pension and benefit plans maintained by private employers.<sup>160</sup> Paid sick leave is not traditionally considered an ERISA-regulated plan so long as it is administered as a “payroll practice;”<sup>161</sup> in other words, so long as pay for those sick days is treated as normal compensation and paid out of the employer’s general assets, it will not be subject to ERISA regulation.<sup>162</sup> Benefits paid out of a separate benefit plan or fund, however, may be subject to ERISA rules. ERISA-regulated plans include funds set up by the employer to provide health, disability or retirement benefits.<sup>163</sup> An employer seeking to set up a fund designated to employee paid leave should consult with an attorney regarding preemption and other issues.

### Collective Bargaining Agreements

A collective bargaining agreement (CBA) is a contract between an employer and its employees (typically represented by a labor union or employee organization) governing the terms and conditions of the employment relationship. The right to collectively bargain is regulated by federal and state laws, including the National Labor Relations Act (NLRA)<sup>164</sup> and the New York State Labor Relations Act.<sup>165</sup> These contracts may include terms concerning any matters that impact the employee-employer relationship, though the NLRA requires that matters related to “wages, hours, and other terms and conditions of employment” be negotiated and included in any agreement.<sup>166</sup>

A community interested in adopting a law requiring paid leave must consider how the law will apply to employees subject to a CBA. For example, the law may prohibit the waiver of the right to paid leave by CBAs, waive application of the law if the CBA provides comparable benefits, or wholly exempt employees covered by CBAs from the law. Currently in practice:

- *New York City*: The law applies to most employees covered by a CBA, unless the contract includes an express waiver of the Act and provides a comparable benefit (construction and grocery industry businesses do not have to provide comparable benefits).<sup>167</sup>
- *Jersey City*: The law applies to employees covered by a CBA, unless the CBA requires more generous benefits.<sup>168</sup>
- *Seattle*: The law applies to employees covered by a CBA, unless the contract includes an express waiver of the ordinance.<sup>169</sup> The law does not require the employer to provide comparable benefits; however if a

CBA provides more generous sick and safe time benefits, the CBA takes precedence over the requirements of the ordinance.<sup>170</sup>

### Accrual of Sick Leave

Under New York State law, paid sick leave is considered a “wage supplement.”<sup>171</sup> payments of wage supplements and the disposition of accrued (but unused) wage supplements upon an employee’s termination is determined by the policy of the employer, so long as the employer notifies employees of the policy through a written document or public posting.<sup>172</sup> Thus, a community developing a paid leave requirement may want to consider whether the policy will permit employers to determine the disposition of accrued but unused leave benefits, or whether a specific disposition is desired. For example, New York City’s Earned Sick Time Act explicitly states “[n]othing in this chapter shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee’s termination, resignation,





retirement, or other separation from employment for accrued sick time that has not been used.”<sup>173</sup>

### Steps to Consider in Developing Employer Paid Leave Policies

No matter which type of policy a community is considering (mandatory vs. incentive-based, public or private employers, etc.) it will benefit from weighing the following steps and provisions in order to improve the policy’s chances of success.

#### Assess Current Status of Paid Leave/Public Support

It is important to understand the status of a given community’s paid leave benefits and assess the type of policy that will have the greatest impact. It may be helpful to consider the existing regulatory environment and appreciate the potential

cumulative impact on local business and public health.<sup>174</sup>

Further, as with any new policy, it is important to assess community support.

#### Describe the Rationale

When drafting a mandatory paid leave policy, the community may incorporate a “Findings” section that explains the rationale for the new law. In this section, describe the reasons paid leave is integral to improving public health through increasing preventive cancer screening rates and include local data (if possible) demonstrating the problem (e.g., that lack of paid leave creates a barrier to preventive screenings). Also use this section to describe how the policy will alleviate the problem of disproportionate access to and use of preventive cancer screenings.

The National Opinion Research Center (NORC) at the University of Chicago conducted a national survey in 2010 to gauge public support for paid sick days.<sup>175</sup> Sixty-nine percent of respondents reported paid sick days are a very important workers' rights measure.<sup>176</sup> Among respondents, there was bi-partisan support for paid sick days, with 85% of "strong democrats" and 64% of "strong republicans" asserting paid sick days are a very important labor standard.<sup>177</sup> Overall, 75% of respondents favor paid sick day legislation, with 61% of respondents strongly in favor and 14% in favor of such a measure.<sup>178</sup>

Additional supporting information and exhibits can also be introduced at government hearings where the law is considered. This supporting information may then be referenced in the findings. This information can aid future attempts to clarify the intent and scope of the law if varying interpretations later emerge. Likewise, if the law becomes subject to a legal challenge, the reviewing court may look to the findings to see if the government had sufficient reasons and justifications for adopting the measure.

### Require Record Keeping

Requiring employers to maintain records of accrued leave and the use of that leave may assist the community with enforcing the policy and assessing its effectiveness. A strong paid leave policy will require employers to maintain records and designate a person or department to enforce the law and analyze use of the leave benefits and associated costs.

Collecting this data permits the community to accurately assess the policy's effectiveness and, if necessary, amend it to improve outcomes. the policy and assessing its effectiveness. A strong paid leave policy will require employers to maintain records and designate a person or department to enforce the law and analyze use of the leave benefits and associated costs. Collecting this data permits the community to accurately assess the policy's effectiveness and, if necessary, amend it to improve outcomes.

### Balance the Rights of Employees and Employers

A paid leave policy should include provisions that will maximize employee use of paid leave and prevent abuse of the policy. For example:

- *Anti-Retaliation Provisions:* Prohibit retaliatory measures by employers when employees seek to use their paid leave. Retaliatory actions by employers may include firing, suspension, "unfavorable reassignment," disciplinary action, and other measures used against an employee to discourage their use of leave time.<sup>179</sup> A policy can explicitly prohibit retaliation and provide an avenue for employees to seek redress if one is subject to such action.<sup>180</sup>
- *Notification Provisions:* Notifications about an employee's right to leave benefits can be provided to employees in a general and individual format. General notifications are provided to the employee population as a whole through mass communication and explain the policy generally.<sup>181</sup> Individual notification is provided to each employee,



specifying the amount of paid leave available to that individual.<sup>182</sup> A policy including both types of notification will increase reach to employees and educate more employees about their rights surrounding paid leave.

- *Prohibit “Replacement Worker” Requirements:* A policy should explicitly prohibit an employer from requiring an employee to find a replacement worker when he or she uses paid leave. Such a provision would interfere with employees’ use of paid leave and defeat the purpose of the policy.<sup>183</sup>
- *Reasonable Notification Requirements:* A policy may permit the employer to require advanced notice of use by an employee when the need for leave is reasonably foreseeable.<sup>184</sup>
- *Reasonable Documentation:* A policy may permit employers to require reasonable documentation for paid leave that lasts for an extended period of time.<sup>185</sup>
- *Continuation of Existing Policies:* A policy may include a provision that allows employers to maintain existing paid leave policies if the policy meets or exceeds the minimum requirements of the mandated leave.<sup>186</sup>

### Hardship Provisions

A community could include a provision that exempts certain employers from complying with the policy if the employer can demonstrate hardship. Washington, D.C.’s Accrued Safe and Sick Leave Act provides for a hardship exemption for businesses that believe they will suffer

financially or in the quality of their business practices.<sup>187</sup>

### Choose Valuable Incentives for a Voluntary Policy

Where a community chooses to develop an incentive program, it will benefit from crafting creative incentives for businesses to adopt paid leave policies. The incentives should be attractive and valuable to business, but also affordable for the community. Incentives might include:

- *Promotional Incentives:* Community groups could offer free marketing or branding (e.g., “Employee-Friendly Business”) to promote a business’s leave policy and encourage community members to patronize the business.
- *Financial Incentives:* A community can explore the relationship between businesses and local government to determine whether there are ways to provide financial relief, such as tax credits or reduced fees; or conveniences or prioritization, perhaps along the lines of streamlined licensing or permitting processes. Additionally, the community may find opportunities for financial incentives outside local government to assist businesses with upgrades or other improvements, perhaps funded through state, federal or NGO grants or other non-governmental sources.

### Wellness Programs

Employers can encourage employees to undergo preventive cancer screenings by offering incentives through worksite

wellness programs. The New York Department of Health Division of Chronic Disease Prevention recognizes that “assisting small worksites in offering quality worksite wellness programs can improve the health status of the workforce and help reduce health costs.”<sup>188</sup> Small businesses are the focus because in New York there are approximately 580,000 worksites, employing over 8,400,000 workers, and 99% of these worksites employ fewer than 500 people.<sup>189</sup> As of January 2014, New York private sector businesses employed over seven million people.<sup>190</sup>

### What is a Wellness Program?

Wellness programs promote healthy behaviors to improve overall workforce health, address health care costs, and decrease the impact of chronic disease on the workforce.<sup>191</sup> The term “wellness

program” describes a variety of employer-sponsored programs, including (but not limited to) weight loss challenges, chronic disease management, nutrition guidance, discounted gym memberships, onsite fitness centers, and preventive care incentives.<sup>192</sup>

Participation in an employer’s wellness program may be incentivized by a variety of means, including offering rewards such as cash, gift cards, transit vouchers, use of premium parking space, “novelty items” (e.g. hats or mugs), bonus leave days, or insurance premium discounts.<sup>193</sup>

Incentives can be provided to employees for participating in a program or for achieving a desired health-related outcome.<sup>194</sup> A program that provides an incentive for participating without regard to an employee’s health status (e.g., his health status does not impact his ability to participate) the wellness program is

### Participatory vs. Health-Contingent Programs

Under federal law, a **participatory wellness program** is one that encourages employees to engage in a particular activity, but do not require them to meet a health-related standard before receiving an award (and some do not provide any reward).<sup>195</sup> Such programs might include required attendance at a health education seminar or obtaining a particular diagnostic test (without regard to the result). In contrast, a **health-contingent wellness program** requires individuals to meet a standard related to health in order to obtain a reward.<sup>196</sup> There are two sub-categories of health-contingent programs: activity-only and outcome-based.<sup>197</sup> Activity-only programs reward a participant for completing or performing an activity related to a health factor, with no requirement to achieve a certain outcome (e.g., join a walking club or complete a weight management course, without regard to any resulting change in BMI or weight).<sup>198</sup> Outcome-based programs require an individual to achieve a certain outcome related to a health factor before receiving a reward or incentive (e.g., tobacco cessation program that requires a participant to stop smoking for a minimum amount of time).<sup>199</sup>

considered “participatory”; if incentives are provided for participating in a program based on the employee’s health status, the wellness program is “health-contingent.”<sup>200</sup> This report focuses on *participatory* wellness programs that encourage employees to undergo preventive cancer screenings for breast, cervical, and colorectal cancer.

### Incentives work

One employer surveyed by RAND Health provided onsite preventive cancer screenings for employees yet experienced only a 20% participation rate. Once the employer implemented a weekly \$50 insurance premium surcharge to those who did not participate, the employer realized almost 100% participation.<sup>201</sup>

## Incentives & Interventions to Encourage Preventive Cancer Screenings

There are a variety of incentives and interventions employers may use to encourage preventive cancer screenings. An employer can be creative in developing a program tailored to the needs of employees by combining a variety of interventions and incentives in a way that works best for that business. However, some incentives may be subject to regulation and therefore require careful consideration (e.g., certain incentives may be taxable income). This is discussed further under the Value of Incentives.

Employers can provide non-financial and financial incentives to encourage employees to undergo recommended preventive screenings. For example, a wellness program can offer non-financial incentives such as coffee mugs, umbrellas, or a premium parking space for participation in a wellness program. A wellness program may also offer a financial incentive including a small payment, gift card, or contribution to a health savings account when an employee has undergone a screening.<sup>202</sup> As another option, a program may offer reduced health insurance premiums for those who remain up-to-date with all recommended, age-appropriate screenings.<sup>203</sup> By way of example, at least one employer offers extra paid leave in exchange for participation in a wellness program.<sup>204</sup>

Employers can also encourage employees to undergo preventive cancer screenings by simply providing workers with educational information about the types of screenings for which they are eligible (based on age, gender). Employers can use a variety of channels to educate employees on the importance of preventive cancer screenings such as e-mail notices, bulletin boards, workplace newsletters, and payroll stuffers.<sup>205</sup>

Health risk assessments (HRAs) are also a useful tool to educate employees. These assessments solicit health-related information from employees and provide individualized feedback, including recommended cancer screenings, based on the employee’s response.<sup>206</sup> An employer has the option to do these assessments in-house or through a health insurer or other third party administrator. There are privacy considerations an employer needs to take into account when

using an HRA to obtain health information from employees, discussed below under the Legal Considerations section.

An HRA coupled with individual health education can be a standalone intervention or one component in a more comprehensive wellness program.<sup>207</sup> Notably, an HRA with feedback that acts as a health-care gateway, pointing employees to incentives, resources, and programs offered by the employer to address issues raised in their individual assessment, has been found to be particularly effective.<sup>208</sup> A wellness program focused on preventive cancer screenings could include an HRA with individual feedback on preventive cancer screenings, as well as a description of insurance coverage for the tests, on-site screening information, a directory of nearby providers, and information on incentives provided by the employer for remaining up-to-date with recommended screenings.<sup>209</sup> To encourage participation, employers may consider tying initial completion of the HRA with a reward that is separate from an incentive tied to undergoing the preventive cancer screening.<sup>210</sup> One study found that by rewarding employees with a payment of \$10 for simply completing an HRA, an employer increased the rate of completion by 1.6%.<sup>211</sup> Another study found that incentives over \$50 for participation in screening activities, particularly completion of HRAs, are effective.<sup>212</sup>

An employer wellness program can also reduce structural (non-economic) barriers to preventive cancer screenings. These barriers might include high levels of stress, job insecurity, extended work days, second or third jobs, caregiving responsibilities, or transportation

burdens.<sup>213</sup> It is important that an employer understand the barriers faced by its employees and tailor a program that makes screenings achievable in spite of these barriers. For instance, if many employees have additional responsibilities outside of work hours that prevent participation, such as caregiving or second jobs, a wellness program might include onsite screening during work hours. Examples of these include mobile breast cancer screenings or distribution of mail-in fecal occult blood testing kits.<sup>214</sup>

### HRA & Employee Surveys

HRAs and employee surveys are useful tools for employers. An employee survey may collect a broad range of information to assess employee interest in and need for a range of wellness programs, insurance coverage, or health-related services. An HRA may serve many purposes during development of a wellness program, including initial assessment prior to implementing a wellness program and evaluation once a wellness program is in place. Alternatively, it can gather information specific to an existing wellness program.<sup>215</sup> Both can be developed by the employer or provided to the employer by its health plan or other third party wellness vendor.<sup>216</sup> These place little burden on employees, can be inexpensive for employers, provide data to connect employees with the right wellness program, and supply employers with information in order to plan and evaluate a health or wellness program or service.<sup>217</sup> Ensuring that the responses are anonymous or confidential encourages more honest responses from employees.<sup>218</sup>

Employers could also partner with community organizations to provide mobile screenings or educational seminars, employee child care services or transportation to screening locations.<sup>219</sup>

### Examples in Practice

Several employers have realized improvements in preventive screening rates among employees through worksite wellness program incentives and interventions. For example, Johnson & Johnson (J&J) provides full insurance coverage for preventive screenings, as well as health education for employees specific to preventive cancer screenings. The J&J health plan reminds eligible employees to obtain preventive cancer screenings and reinforces these reminders with on-site promotional campaigns targeting J&J employees.<sup>220</sup> The program also provides incentives for preventive screenings. Specifically, employees and their spouses or partners over the age of 50 can earn \$250 for obtaining a colonoscopy.<sup>221</sup> J&J also uses a “3-tiered approach” to improve cancer screening rates among employees: increasing awareness through education, providing prescreening opportunities, and facilitating screenings (e.g. on-site screenings, scheduling screenings, and providing colonoscopy prep kits).<sup>222</sup> After implementation of this program, colorectal cancer screening rates increased by 15%.<sup>223</sup>

The state of Nebraska implemented an incentive program for state employees to encourage preventive cancer screenings. Nebraska coordinates a health plan and wellness program for its employees, called the “Wellness Plan” and “*wellness*

*options*,” respectively (implemented prior to enactment of the ACA).<sup>224</sup> The state implemented these programs to address rising premiums and improve employees’ use of preventive services with the aim that employees become proactive, rather than reactive, patients.<sup>225</sup> Enrollment into the Wellness Plan is incentivized with lower premium costs.<sup>226</sup> To be eligible for the reduced premiums, employees must enroll in a wellness program offered through *wellness options* (e.g. a walking challenge or lifestyle coaching), and complete both a biometric screening and online health assessment.<sup>227</sup> The Wellness Plan fully covers routine and follow-up mammograms and colonoscopies, and routine Pap smears.<sup>228</sup> The program includes targeted home mailings with recommendations for screenings for cancer, diabetes, heart disease and other chronic health conditions.<sup>229</sup> Importantly, the recommendations include those screenings for which an employee reported (through the HRA administered by a third party) that he or she was not up-to-date.<sup>230</sup> The recommendation also includes information about the insurance coverage available for that screening and a list of local providers.<sup>231</sup> The individualized recommendations resulted in compliance increasing from 33% to 70%.<sup>232</sup> According to one review, the program caught 514 new cases of early stage cancer (mostly breast and colon cancer).<sup>233</sup>

The state of Connecticut has implemented the Health Enhancement Program (HEP). State employees enrolled in HEP pay lower monthly premiums and do not have to pay annual deductibles for in-network care.<sup>234</sup> Enrollees are required to obtain age-appropriate exams, immunizations, and early diagnosis screenings (including

preventive screenings for colorectal, cervical, and breast cancer).<sup>235</sup> If enrollees fail to meet HEP's requirements, they may be removed from the program.<sup>236</sup> About 98% of the 54,000 eligible employees (and retirees) are enrolled in HEP and it is estimated that more than 99% of them met HEP requisites (and thus are compliant with recommended screenings).<sup>237</sup> Further, primary care visits have increased and specialty and emergency care visits have decreased.<sup>238</sup>

### Legal considerations

Employers must ensure that wellness program components comply with state and federal laws, with particular attention to laws that govern the types of incentives provided and participation requirements (see the following sections below discussing discrimination and the value of incentives). Careful development of a program can ensure that an employer's program is both effective and compliant with these laws and regulations. An employer may decide to run a wellness program itself or coordinate with its health benefits provider to provide a wellness program. The legal issues discussed below focus specifically on *participatory* wellness programs with the goal of increasing preventive cancer screening rates. Broader programs that include health-contingent programs must comply with additional legal requirements and limitations, which may not be included in this report.

### More than just preventive cancer screenings

Worksite wellness programs can incorporate a number of interventions that decrease the incidence of cancer and other health risks. Nebraska's program includes components designed to improve diet, weight management, and physical activity.<sup>239</sup> Connecticut's plan requires that those suffering from certain chronic conditions (diabetes, asthma, high blood pressure) participate in disease education and counseling.<sup>240</sup> J&J's program is very broad and includes health coaching and memberships for gym facilities, tobacco free campuses, and on-site cafeterias providing healthy food.<sup>241</sup>



## Discrimination

Group health plans may not discriminate in premiums or benefits based on an individual's health status.<sup>242</sup> However, group health plans are specifically permitted to provide differential premiums based on participation in wellness programs, provided the program is available to all "similarly situated" employees without regard to health status.<sup>243</sup> Participatory wellness programs are generally considered to meet this standard for nondiscrimination because these programs do not consider any health status.<sup>244</sup> Thus, a wellness program may include a reward (such as discounted premium payments) for participating in a diagnostic screening program<sup>245</sup>; but an activity-only health-contingent program, such as one that provides a premium discount for participation in a walking club, may be inaccessible for individuals with certain health conditions, such as those with asthma, and therefore must provide a reasonable alternative to permit those employees to qualify for a reward to avoid any discrimination.<sup>246</sup> For practical reasons, an employer may want to make sure a narrow participatory program, such as one that simply incentivizes undergoing age-appropriate cancer screenings, also provides a proportional reward considering that many individuals may not be eligible for non-health related reasons (e.g., too young for diagnostic test to be recommended or previous medical procedure that eliminates cancer risk (such as mastectomy)). However, premium discounts would be a permissible reward under federal law.

Additionally, a New York employer cannot discriminate against an employee based

on race, color, national origin, religion, disability, sex, sexual orientation, age, predisposing genetic characteristics, or marital status.<sup>247</sup> Any wellness program developed by an employer should be open to all and cannot exclude a person based on any of these characteristics. Further, an employer should take steps to make sure that a wellness program does not result in an unintended discriminatory impact on protected groups (e.g., an incentive structure resulting in shifting a financial burden onto protected group).<sup>248</sup>

Incentives and participation requirements must be carefully crafted to provide equal treatment to employees. For example, some advocacy organizations have voiced concerns over certain medical exam requirements or disability-related questions (e.g., within an HRA) that might violate the Genetic Information Nondiscrimination Act (GINA) and the Americans' with Disabilities Act (ADA).<sup>249</sup> While these laws permit employers to ask employees to volunteer certain medical information in connection with wellness programs, whether revelation of certain information is "voluntary" is often dependent on the surrounding circumstances, such as the level of incentives or the treatment of the information.<sup>250</sup> For example, an HRA that requires employees provide family medical history in order to be eligible for an incentive payment would be considered discriminatory (and the release of genetic information-gleaned from family history-would be considered involuntary) under the GINA; however, the same HRA could be valid if employees

### At what point does a wellness program become involuntary?

This question is part of an on-going discussion on when a wellness program's design and incentives may result in it no longer being voluntary for an employee—particularly under the ADA and GINA. At the federal level, the Equal Employment Opportunity Commission (EEOC) has stated that a wellness program is voluntary if it “neither requires participation nor penalizes employees who do not participate” in relation to discussions over inquiries and examinations permissible under the Americans with Disabilities Act (ADA). However, testimony before the EEOC highlights a need for further clarification for employers to ease concerns over potential enforcement actions. New York law reflects federal law in requiring that wellness programs of health plan issuers be voluntary—but similarly provides little guidance as to what is considered voluntary.

were permitted to skip those particular questions and still receive the incentive.<sup>251</sup> Similarly, disability-related questions may be included in an HRA so long as the information is treated as confidential medical records by the employer and not used for discriminatory purposes.<sup>252</sup>

#### Value of incentives

If a wellness program includes incentives for participating employees the value of the incentive must be carefully considered. Specifically, certain incentives, such as cash or cash equivalents (e.g., gift cards) must be reported as income.<sup>253</sup> However, certain “fringe benefits” can be excluded from gross income (which is used to compute taxable income).<sup>254</sup> These can include:

- De minimis fringe benefits (property or service of so little value it is unreasonable or administratively impracticable to account for it. The Internal Revenue Service suggests looking both at the frequency and value of the benefit to determine whether it is de minimis);<sup>255</sup>

- Transportation benefits (e.g., transit passes, bicycle commuting reimbursement, and qualified parking); and
- Qualified employee discount (e.g., on services or items provided by the employer to consumers. For services, the employee discount can be 20% off of the price of the service when offered to customers.<sup>256</sup> For property, the discount cannot exceed the “gross profit percentage” of the price the property is offered to customers.<sup>257</sup> The “gross profit percentage” is the profit made from selling the property.)<sup>258</sup>

Employer contributions to health insurance premiums or direct health benefits are not included in the taxable income of employees.<sup>259</sup> This means that incentives tied to employer contribution toward premiums are excluded from taxable income.<sup>260</sup> Employer contributions to incentives tied to outcome-based activities, however, such as gym memberships for weight loss, would not fall under this category and therefore may be taxable.<sup>261</sup> Any employer considering



these types of incentives should discuss the issue with an attorney to determine the most appropriate benefits.

### Privacy

Federal law requires that any health information gathered in connection with an employer-sponsored wellness program be protected and kept private. The Health Insurance Portability and Accountability Act (HIPAA) requires that “covered entities,” which include health plans, health care clearing houses, and health care providers, keep all individually-identifiable health information (i.e., health information which includes information that can be used to identify the individual about whom the information refers) in confidence unless authorized by the individual to whom the information refers.<sup>262</sup> This includes information obtained through an HRA or the results of a preventive screening.<sup>263</sup> An employer working with a health plan (as opposed to providing a self-insured plan), while not generally considered a “covered entity,” may be subject to HIPAA requirements as a “business associate” if it carries out part of the program on behalf of a health plan.<sup>264</sup> Employers who provide a self-insured plan (and self-insured plan sponsors) may need to enter into business associate agreements with service providers.<sup>265</sup>

### Special Considerations for Employers Working with Community Rated Plans

New York State requires certain health insurance policies covering individuals and small groups to be “community rated.” Community rating provides some price

stability for individuals and small groups, pooling them into one risk market.<sup>266</sup> Premiums are based on the risk evaluation of the group, rather than individuals; thus the same premium price is offered to all individuals or small groups in the pool.<sup>267</sup> This rating requires that affected insurance policies carry the same premium price for all individuals and small groups covered (50 or fewer members or employees, exclusive of dependents).<sup>268</sup> Employers who purchase insurance for their employees through community rated plans are permitted to provide incentives as part of a wellness program, but may *not* include premium discounts or rebates as an incentive.<sup>269</sup>

### Employee benefit plans

Wellness programs that provide health-related benefits to employees may be subject to regulation by the Employment Retirement Income Security Act (ERISA).<sup>270</sup> ERISA is a federal law that, among other things, sets minimum standards for employee benefit plans, including plans that offer medical care.<sup>271</sup> A wellness program that is offered in conjunction with a group health plan (e.g., provides premium discounts for an ERISA-regulated group plan) is subject to ERISA.<sup>272</sup> A wellness program that rewards employees who remain up-to-date with age-appropriate cancer screenings with cash incentives may be subject to ERISA if tied to employer-sponsored health benefits, but may not have to separately comply with ERISA (i.e., the program will comply so long as the underlying benefit plan complies). Whether a wellness program that is offered separately from a group health plan is subject to ERISA will depend on

the type of benefits it provides. For example, a wellness program offered separately from a group health plan may be subject to ERISA if it offers physical exams or screenings (rather than incentives for such exams and screenings).<sup>273</sup> On the other hand, ERISA is unlikely to apply to a program that provides educational seminars on the benefits of cancer screenings.<sup>274</sup> An employer with an ERISA-regulated group health plan that is interested in adopting a wellness program should seek the advice of an attorney.

### Employee Relations

Employers whose workforce is organized by a union may have to negotiate the implementation of a wellness program. The National Labor Relations Act (NLRA) requires employers and employee representatives (i.e., unions) to negotiate, in good faith, an agreement regarding wages, hours, and other terms and conditions of employment.<sup>275</sup> Employee benefit plans such as health insurance are

required to be negotiated; thus the implementation of (or change to) any wellness program that affects employee health plans (such as employee premium contributions) should be included in any negotiation.<sup>276</sup>

### Off-Duty Employee Conduct

New York law prohibits an employer from discriminating against an employee because of the employee's legal, recreational activities during off-hours (e.g., smoking). An exception permits employers to require differential premiums or health benefits for employees based on the employees' recreational activities, within certain limits.<sup>277</sup> For example, differential premiums charged to employees must reflect a differential cost to employer (who must be able to provide proof of the different rates charged by the insurance provider).<sup>278</sup> Employers should be mindful of this requirement if using premium-based incentives for employees to engage in healthy behaviors (or refrain from engaging in unhealthy ones).



## Considerations for Smaller Employers

While wellness programs are popular among larger employers, smaller employers may feel constrained by limited resources and unable to adopt comprehensive programs. Smaller employers, however, employ the most people collectively and thus could have the most impact on cancer screening rates through workplace wellness programs.<sup>279</sup> Decisions by small employers tend to heavily depend on their bottom line.<sup>280</sup> Small employers are going to look to programs that clearly demonstrate a positive impact on both employees and overall business.<sup>281</sup> Fortunately, there are resources available to small businesses seeking to improve the health of their workforce. These include resources to assist in wellness program development and opportunities to collaborate with other businesses or the local community to implement a wellness program. For example:

- Wellness program development assistance—An employer’s benefits broker or health insurance provider is likely to have information about and experience with the introduction of wellness programs into the workplace. Additionally, local and state Chambers of Commerce or Small Business Development Centers may be able to serve as a source of information.<sup>282</sup>
- Collaboration with other businesses and community groups—Small employers and the communities in which they are located may consider collaborating to ensure the implementation of successful and effective wellness programs. For example, Healthy Maine Streets, a community organization in Maine, works to improve community health by revitalizing the downtown areas of Maine’s cities and towns.<sup>283</sup> The program is CDC grant funded and creates local wellness committees made up of wellness providers, local business owners, and community members with a focus towards improving their downtown or main street.<sup>284</sup> The program recruits employers to participate, with a focus on improving employee wellness in three areas: tobacco use, nutrition, and physical activity.<sup>285</sup> Participating employers conduct a baseline assessment of their employee benefits and offerings and develop a plan to improve employee health in those three areas.<sup>286</sup> The program is an example of successful collaboration among local governments, small businesses, local health providers, and other community organizations.<sup>287</sup> These successful partnerships allow small, local businesses to collectively implement wellness strategies and reduce the financial and resource burdens they may otherwise face if working towards wellness alone.

## Considerations for Wellness Program Development

An employer can take certain steps and adopt certain practices within its wellness program to improve its chance of success. This includes determining what barriers to preventive cancer screenings its employees face, which incentives motivate its workforce, and how to implement strong communication and leadership in these areas, as well as measures to ensure employee privacy and evaluate the program's effectiveness.

### Assess Employee Environments

Assessment of the overall environment for employees, both at and outside of the workplace, may be the first step for an employer considering implementation of a wellness program.<sup>288</sup> An assessment will identify barriers to preventive cancer screenings. These barriers may include systemic barriers, such as weaknesses in current benefits provided (including gaps in coverage or grandfathered plans that still require out-of-pocket payments for preventive services), lack of knowledge of screenings' importance or coverage, and limited physical access to care. Individual barriers, such as second jobs and child care responsibilities, lack of knowledge, and physical access to care may also emerge.<sup>289</sup> Resources helpful for an employer in its assessment include site visits, health risk appraisals (HRAs), employee surveys, health benefits review, health care costs and claims data, employer records on the use of sick time, current participation in existing workplace programs, and literature on the barriers to obtaining cancer screenings (for example information provided by the Guide to

Community Preventive Services discussed in more detail below).<sup>290</sup>

A national survey of small business owners found that 24% would most likely invest in wellness programs focused on health education, prevention, or screening.<sup>291</sup> This was second only to wellness programs focused on stress management, wherein 26% of small business owners would invest.<sup>292</sup>

### Tailor the Program

After assessing the workplace environment, an employer can structure a program to provide incentives and interventions that will be of the most value to its employees. Preventive screenings can take place at the workplace, in partnership with local health clinics, or through health plans with the employee's regular primary care doctor.<sup>293</sup> As mentioned earlier, wellness programs can include incentives (monetary or other), health assessments with personalized feedback or onsite screenings.

There are many resources that can assist employers in developing workplace wellness interventions. The Guide to Community Preventive Services (Community Guide), an online resource developed by the Community Services Preventive Task Force (established by the U.S. Department of Health and Human Services), provides information on evidence-based interventions and may provide some inspiration to employers.<sup>294</sup> In particular, it provides information on interventions to increase breast, cervical, and colorectal cancer screenings.<sup>295</sup> Two other programs run by the Center for Disease Control and Prevention, the Work@Health Program and the National



Healthy Worksite Program (NHWP), provide helpful resources for employers.<sup>296</sup> The Work@Health program trains and supports 600 employers and participants who support employer workplace health programs (including health departments).<sup>297</sup> This program includes opportunities to get involved in employer training and also provides resources for workplace wellness programs.<sup>298</sup> The NHWP program focuses on using science and practice-based wellness strategies to achieve specific health outcomes to reduce the rate of chronic disease.<sup>299</sup> Under this program, CDC contractors receive funds to assist employers with workplace wellness programs focused on physical activity, nutrition, and tobacco use cessation for 24 months, followed with 10 months of post-intervention evaluation.<sup>300</sup> The NHWP website provides training materials, toolkits, and additional employer resources.<sup>301</sup>

An employer can be creative and design a program that will be most effective for his or her employees. An employer will want

to weigh the costs and benefits of, as well as consider any legal implications for or limits to, the desired wellness program. The employer will also want to determine whether to coordinate the program with its insurer or administer it on its own.<sup>302</sup>

### Effective Communication and Leadership

Implementation of an effective workplace wellness program requires committed leadership and effective communication with employees. An employer needs to be dedicated to the wellness program's success and implement a communication plan that educates employees about the program and its benefits.<sup>303</sup> There are a number of ways to do this, including identifying employees interested in developing and advocating the wellness program, newsletters, payroll stuffers, and other creative means to educate employees.<sup>304</sup>

### Provide Effective Incentives

Subject to the legal limitations discussed above, incentives may be provided to encourage or reward participation in a wellness program. The employer, a health plan, or other third party administrator of a wellness program can provide the incentives.<sup>305</sup> Ideal incentives are affordable for the party providing them and valuable enough to motivate employees to

participate in workplace wellness.<sup>306</sup> They also do not add additional barriers or burdens to an employee's access to preventive cancer screenings. Typically, incentives are framed as rewards as opposed to penalties.<sup>307</sup> For example, differences in premiums are framed as "premium differentials," as opposed to premium surcharges or penalties for noncompliance or nonparticipation

## Insurance Coverage

Many larger employers will soon be required to offer health insurance coverage to their employees, and small employers are eligible for tax credits if they offer insurance coverage. Many of these plans, unless grandfathered, will provide full coverage of preventive screenings as required by the ACA. The elimination of out-of-pocket payments for screenings has been shown to be an effective intervention for breast and cervical cancer screenings (there are no qualifying studies for the effectiveness of such an incentive for colorectal cancer screenings).<sup>308</sup>

(remember, however, that community rated health plans in New York are currently prohibited from offering certain incentives).<sup>309</sup>

### Privacy

A wellness program may include a component that gathers health information from employees in order to determine their health status and provide tailored and appropriate feedback. Because of the sensitive nature of and legal protections to this information, an employer must apply safeguards of employee's personal health information.<sup>310</sup> This includes clearly defining the objective of health assessments, carefully distributing health

assessments, and implementing data security policies.<sup>311</sup>

### Program Evaluation

Employers ought to consider ongoing evaluation for any workplace wellness program to determine its effectiveness. The evaluation plan should be developed at the outset.<sup>312</sup> The CDC recommends that an evaluation plan measure changes in worker productivity, health care costs, health outcomes, and organizational change as a result of the program.<sup>313</sup> Evaluations will be particularly effective when conducted on an ongoing basis.<sup>314</sup>

### Technical Assistance for Employers

The Affordable Care Act directs the Center for Disease Control and Prevention (CDC) to provide employers with technical assistance, tools, and other resources to assist in evaluating employer wellness programs. These and other workplace wellness tools can be viewed at the links provided in Appendix C.

### Conclusion

Increasing cancer screening rates and reducing disparities among those who obtain them is an important New York State public health goal. One way to improve screening rates for a large

number of people is to encourage screenings through workplace programs, such as programs providing paid leave or incentives to employees. Both policies have been associated with increasing rates of preventive cancer screenings and minimizing barriers to screenings, including knowledge about and access to screenings. In sum, communities and employers have the opportunity to adopt policies that increase preventive cancer screening rates. The shift in focus to preventive health measures across the country provides impetus and resources for employers to encourage healthy behaviors in their workforces. The policies in this report are but some options to create an environment that encourages and makes feasible disparate employees undergoing preventive cancer screenings and thus supports efforts to improve the health of New Yorkers.

## Citations

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- <sup>3</sup> *Id.* at 45.
- <sup>4</sup> *Id.*
- <sup>5</sup> PARTNERSHIP FOR PREVENTION, *Preventive Care: A National Profile on Use, Disparities, and Health Benefits*, at 22 (2007), <http://www.rwjf.org/content/dam/farm/reports/reports/2007/rwjf13325>.
- <sup>6</sup> *Id.* at 27.
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- <sup>8</sup> *Federal Interagency Workgroup*, HEALTHYPEOPLE.GOV, <http://www.healthypeople.gov/2020/about/fiw.aspx> (last visited Mar. 31, 2014).
- <sup>9</sup> *Objective Development and Selection Process*, HEALTHYPEOPLE.GOV, <http://www.healthypeople.gov/2020/about/objectiveDevelopment.aspx> (last visited Mar. 31, 2014).
- <sup>10</sup> ACS FACTS & FIGURES, *supra* note 1, at 3.
- <sup>11</sup> *News: Cancer Costs Projected to Reach at least \$158 billion by 2020*, NAT'L CANCER INST. AT THE NAT'L INST. OF HEALTH (2011), <http://www.cancer.gov/newscenter/newsfromnci/2011/CostCancer2020>.
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- <sup>14</sup> *Cancer, Objectives*, HEALTHYPEOPLE.GOV, <http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicId=5> (last visited Mar. 31, 2014) (screenings obtained on most recent guidelines).
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- <sup>19</sup> *Id.* at 20.
- <sup>20</sup> Peggy A. Hannon, *Interventions to Improve Cancer Screening Opportunities in the Workplace*, 35 AM. J. PREV. MED, at s10 (2008) (“smaller employers employ the most people.”), available at <http://www.thecommunityguide.org/cancer/screening/client-oriented/Hannon.S10-S13.pdf>. *National Prevention Strategy: America's Plan for Better Health and Wellness*, NAT'L PREVENTION COUNCIL AND OFFICE OF THE SURGEON GENERAL 21 (2011),



<http://www.surgeongeneral.gov/initiatives/prevention/strategy/report.pdf> (recommending employers take the following measures: offer health coverage that provides employees and their families access to range of clinical preventive services with no or reduced out-of-pocket costs; provide incentives for employees and their families to access clinical preventive services, consistent with existing law; and give employees time off to access clinical preventive services and comprehensive wellness programs, consistent with existing law); See *National Comprehensive Cancer Control Program*, CTR. FOR DISEASE CONTROL, (Sept. 9, 2013) [http://www.cdc.gov/cancer/ncccp/what\\_is\\_cccp.htm](http://www.cdc.gov/cancer/ncccp/what_is_cccp.htm)

<sup>22</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).

<sup>23</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 2713(A)(ii)(stating that “A group health plan and a health insurance issuer offering group or individual health insurance coverage shall, at a minimum, provide coverage for and shall not impose any cost sharing requirements for (1) evidence-based items or services that have in effect a rating of ‘A’ or ‘B’; in the current recommendations of the United States Preventive Services Task Force.”); See 42 U.S.C. § 300gg-91 defining “group health plan” as an employee welfare benefit plan ... to the extent that the plan provides medical care...to employees or their dependents...directly or through insurance, reimbursement, or otherwise.” This section also defines “health insurance issuer” as “an insurance company, insurance service, or insurance organization ... which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance ... Such term does not include a group health plan.”; *Focus on Health Reform: Preventive Services Covered by Private Health Plans under the Affordable Care Act*, THE HENRY J. KAISER FAMILY FOUNDATION (2011), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8219.pdf>; 2010 WL 2801108, at \*1-2 (“The term ‘group health plan’ is used in title XXVII of the PHS Act, part 7 of ERISA, and chapter 100 of the Code, and is distinct from the term ‘health plan,’ as used in other provisions of title I of the Affordable Care Act.” The term “health plan” does not include self-insured group health plans).

<sup>24</sup> See *What are my preventive care benefits?*, HEALTHCARE.GOV, <https://www.healthcare.gov/what-are-my-preventive-care-benefits/>, (last visited May 7, 2014),

<sup>25</sup> See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 2713(a).

<sup>26</sup> Sabatino et al, *Effectiveness of Interventions to Increase Screening for Breast, Cervical, and Colorectal Cancers*, 43 AM. J. PREV. MED., 1, 97-118, 109 (2012), available at [http://www.thecommunityguide.org/cancer/screening/ClientProviderOriented2012\\_EvidenceReview.pdf](http://www.thecommunityguide.org/cancer/screening/ClientProviderOriented2012_EvidenceReview.pdf).

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<sup>29</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 1513; See 26 U.S.C.A. § 4980H(a) (The same goes for large employers that do offer enrollment in a plan but an employee enrolls in a health plan through an exchange and receives a premium credit or cost sharing reduction because that employee finds the coverage to be unaffordable or inadequate. See 26 U.S.C.A. § 2980H(b)).

<sup>30</sup> See *Small and Large Business Health Insurance: State & Federal Roles*, NAT’L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/health/small-business-health-insurance.aspx> (last updated Feb. 10, 2014) (there is a federal SHOP Marketplace as well as state SHOP Marketplaces).

<sup>31</sup> *Employers with Up to 50 Employees*, U.S. SMALL BUSINESS ADMIN., <http://www.sba.gov/content/employers-with-up-to-50-employees> (last visited Apr. 2, 2014).

<sup>32</sup> 26 U.S.C.A. § 45R; Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 1421.

<sup>33</sup> 26 U.S.C.A. § 45R ; *Small Business Health Care Tax credit for Small Employers*, IRS (2014), <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>; *Employers with Fewer Than 25 Employees*, SBA.GOV, <http://www.sba.gov/content/employers-with-fewer-25-employees> (last visited Apr. 2, 2014).

<sup>34</sup> *Small Business Health Care Tax credit for Small Employers*, IRS (2014), <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>.

<sup>35</sup> *Id.*

<sup>36</sup> *What is the SHOP Marketplace?*, HEALTHCARE.GOV , <https://www.healthcare.gov/what-is-the-shop-marketplace/> (last visited Apr. 2, 2014).

<sup>37</sup> The NYS Small Business Marketplace can be accessed at <https://nystateofhealth.ny.gov/employer>; typically, states require 70% of eligible employees to enroll in offered plan to participate in SHOP Marketplace See *Key Facts About the Small Business Health Options Program (SHOP) Marketplace*, CTR. FOR MEDICARE & MEDICAID SERVICES 2 (2013), <http://marketplace.cms.gov/getofficialresources/publications-and-articles/key-facts-about-shop.pdf>.

<sup>38</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 10408 (defining comprehensive workplace wellness program as one that includes the following components: (1) health awareness initiatives (2) initiatives to change unhealthy behavior (3) supportive environment efforts. See *id.* § 10408(c))

<sup>39</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 10408(b).

<sup>40</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 10408(e).

<sup>41</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 4002.

<sup>42</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, tit. 1, § 4002(d) (eligible activities are those for prevention, wellness, and public health. See *id.* § 4002(c)(d)).

<sup>43</sup> *Prevention and Public Health Fund*, HHS.GOV, <http://www.hhs.gov/open/recordsandreports/prevention/> (last visited Apr. 2, 2014).

<sup>44</sup> *About Work@Health*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workathealth/about.html> (last visited Apr. 2, 2014).

<sup>45</sup> *Fiscal Year 2014: Center for Disease Control and Prevention – Justification of Estimates for Appropriation Committees*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 15, 369 (2014) [http://www.cdc.gov/fmo/topic/Budget%20Information/appropriations\\_budget\\_form\\_pdf/FY2014\\_CJ\\_CDC\\_FINAL.pdf](http://www.cdc.gov/fmo/topic/Budget%20Information/appropriations_budget_form_pdf/FY2014_CJ_CDC_FINAL.pdf)

<sup>46</sup> See Lucy A. Peipins et al, The lack of paid sick leave as a barrier to cancer screening and medical care-seeking: results from the National Health Interview Survey, BMC PUBLIC HEALTH 1, 2 (2012), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3433348/pdf/1471-2458-12-520.pdf> (finding that “The percentage of workers who underwent mammography, Pap test, endoscopy at recommended intervals, had seen a doctor during the prior 12 months or had at least one visit to a health care provider during the prior 12 months was significantly higher among those with paid sick leave as compared with those without sick leave.”); Won Kim Cook, Paid Sick Days and Health Care Use: An Analysis of the 2007 National health Interview Survey Data, 54 AM. J. IND. MED. 771-779, 777(2011), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3168716/pdf/nihms305969.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> *Everyone Gets Sick. Not everyone has time to get better*, NAT’L PARTNERSHIP FOR WOMEN & FAMILIES 2 (2011), [http://go.nationalpartnership.org/site/DocServer/PSD\\_Briefing\\_Book.pdf](http://go.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf); *Fact Sheet: Paid Sick Days*, CTR. FOR AMERICAN PROGRESS 2 (2012), [http://www.americanprogress.org/wp-content/uploads/issues/2012/08/pdf/paidsickdays\\_factsheet.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2012/08/pdf/paidsickdays_factsheet.pdf).

<sup>49</sup> NEW YORK DEPT. OF HEALTH, NY STATE POLICY AGENDA 33 (2012). This complements the goal of the National Comprehensive Cancer Control Program to increase cancer screening tests, see *National Comprehensive Cancer Control Program, What is Comprehensive Cancer Control?* CTR. FOR DISEASE CONTROL AND PREVENTION, (Sept. 9, 2013) [http://www.cdc.gov/cancer/ncccp/what\\_is\\_cccp.htm](http://www.cdc.gov/cancer/ncccp/what_is_cccp.htm).

<sup>50</sup> Peipins, *supra* note 54, at 4-5 (medical care visits included seeing or talking to a general practice, internal medicine, family doctor, or other health care professional in a location other than a hospital, emergency room, or dental office).

<sup>51</sup> *Id.* at 8 (This study did not find an association between access to paid sick leave and individuals undergoing fecal occult blood testing (FOBT)).

<sup>52</sup> Won Kim Cook, *supra* note 54, at 777.

<sup>53</sup> *Id.* at 777 (defining outpatient care as any visit with the following medical practitioners: nurse practitioner, physician's assistant, midwife, general doctor, specials, obstetrician, or gynecologist. The study did not find a similar association between access to paid sick days and reduced E.R. visits unless access to paid sick days was combined with insurance coverage).

<sup>54</sup> Roy C. Baron et al, *Recommendation and Delivery of Screening for Breast, Cervical, and Colorectal Cancers by Healthcare Providers*, 38 AM J. PREV. MED. 110-117, 111 (2010), available at [http://www.thecommunityguide.org/cancer/screening/provider-oriented/InterventionsIncreaseRecommendationDeliveryScreeningBreastCervicalColorectalCancersHealthcareProvidersSystematicReview\\_2.pdf](http://www.thecommunityguide.org/cancer/screening/provider-oriented/InterventionsIncreaseRecommendationDeliveryScreeningBreastCervicalColorectalCancersHealthcareProvidersSystematicReview_2.pdf). ("Discussion between healthcare providers and their clients regarding the options for and importance of cancer screening is an important determinant of adherence to cancer screening recommendations.")

<sup>55</sup> Won Kim Cook, *supra* note 54, at 776 (The study did not find a similar association between access to paid sick days and reduced E.R. visits unless access to paid sick days was combined with insurance coverage).

<sup>56</sup> *BLS STATISTICS*, *supra* note 64, at 16 Table 6.

<sup>57</sup> *Id.* (describing the lowest 10% and 25% of wage earners in the private sector as those whose occupation has an average hourly wage less than the 10<sup>th</sup> percentile - \$8.50/hr.- and 25<sup>th</sup> percentile- \$11.00/hr.- respectively.).

<sup>58</sup> *Id.* (describing the highest wage earners in the private sector as those whose hourly wage was at or greater than the 90<sup>th</sup> percentile- or \$40.44/hr.).

<sup>59</sup> *Id.* at 1.

<sup>60</sup> *Id.* (defining small establishments as those with 1 to 99 workers and large and medium employers as having 100 or more employees.).

<sup>61</sup> See NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, EVERYONE GETS SICK. NOT EVERYONE HAS THE TIME TO GET BETTER 10 (2011), available at [http://paysickdays.nationalpartnership.org/site/DocServer/PSD\\_Briefing\\_Book.pdf?docID=9121](http://paysickdays.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf?docID=9121).

<sup>62</sup> BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS IN THE UNITED STATES- MARCH 2013, at 16 Table 6 (2013), available at <http://www.bls.gov/news.release/pdf/ebs2.pdf> (87% AND 88% OF full-time workers in both public and private sector have access to paid vacation and holidays respectively compared to 34% and 38% of part time workers)[Hereinafter *BLS STATISTICS*]

<sup>63</sup> *Id.* (78% and 81% of the highest 10% of wage earners have access to paid vacation and paid holidays respectively compared with 39% and 37% of the lowest 10 % of wage earners.).

<sup>64</sup> *Id.* at 16 Table 6.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Jody Heymann et al., *Contagion Nation: A Comparison of Paid Sick Day Policies in 22 Countries*, CTR. FOR ECONOMIC AND POLICY RESEARCH 3 (2009), available at <http://www.cepr.net/documents/publications/paid-sick-days-2009-05.pdf>.

<sup>68</sup> Jane Farrell and Joanna Venator, Paid Sick Days: Paid Sick Days Work for U.S. Employees and Employers, Center for American Progress 2 (2012), available at [http://www.americanprogress.org/wp-content/uploads/issues/2012/08/pdf/paysickdays\\_factsheet.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2012/08/pdf/paysickdays_factsheet.pdf).

<sup>69</sup> NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, EVERYONE GETS SICK. NOT EVERYONE HAS THE TIME TO GET BETTER 6 (2011), available at [http://go.nationalpartnership.org/site/DocServer/PSD\\_Briefing\\_Book.pdf](http://go.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf), citing INSTITUTE FOR WOMEN'S POLICY RESEARCH, PAID SICK DAY ACCESS RATES BY GENDER AND RACE/ETHNICITY 2010 3 (2011), available at <http://www.iwpr.org/press-room/press-releases/paid-sick-day-access-rates-by-gender-and-race-ethnicity-2010>.

<sup>70</sup> UNITED STATES GOV'T ACCOUNTABILITY OFFICE, *Gender Pay Differences*, GAO HIGHLIGHTS 10, 23 (2011), available at <http://www.gao.gov/assets/590/585721.pdf>.

<sup>141</sup> NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, EVERYONE GETS SICK. NOT EVERYONE HAS THE TIME TO GET BETTER 4 (2011), *available at* [http://paysickdays.nationalpartnership.org/site/DocServer/PSD\\_Briefing\\_Book.pdf?docID=9121](http://paysickdays.nationalpartnership.org/site/DocServer/PSD_Briefing_Book.pdf?docID=9121) (discussing the 2009 H1N1 flu virus).

<sup>142</sup> NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, PAID SICK DAYS: GOOD FOR BUSINESS, GOOD FOR WORKERS 1 (2012), *available at* [http://go.nationalpartnership.org/site/DocServer/PSD\\_Business\\_FINAL.pdf?docID=7825](http://go.nationalpartnership.org/site/DocServer/PSD_Business_FINAL.pdf?docID=7825)[hereinafter *Good for Business Good for Workers*], citing Walter F. Stewart, *Lost Productive Work Time Costs from Health Conditions in the United States: Results from the American Productivity Audit*, JOURNAL OF OCCUPATIONAL AND ENVTL. MEDICINE 1234 (2003), *available at* [http://www.workhealth.org/whatsnew/whnewrap/Stewart%20etal\\_lost%20productive%20work%20time%20costs%20from%20health%20conditions%20in%20the%20US\\_%20Results%20from%20the%20American%20Productivity%20Audit%202003.pdf](http://www.workhealth.org/whatsnew/whnewrap/Stewart%20etal_lost%20productive%20work%20time%20costs%20from%20health%20conditions%20in%20the%20US_%20Results%20from%20the%20American%20Productivity%20Audit%202003.pdf).

<sup>143</sup> Good for Business, Good for Workers, *supra* note 81, at 1.

<sup>144</sup> *Id.* at 2.

<sup>75</sup> INSTITUTE FOR WOMEN'S POLICY RESEARCH, FACT SHEET: ACCESS TO PAID SICK DAYS IN THE STATES, 2010, at 2 (2011). This statistic pre-dates the enactment and implementation of New York City's Earned Sick Time Act.

<sup>76</sup> NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, SUPPORT PAID SICK DAYS: NEW YORK 1 (2011), *available at* <http://www.nationalpartnership.org/research-library/campaigns/psd/new-york.pdf>.

<sup>77</sup> *Overview of the New York City Earned Sick Time Act*, A BETTER BALANCE (2014), <http://www.abetterbalance.org/web/images/stories/Documents/sickdays/factsheet/NYCpsdLaw.pdf> (last visited Apr. 3, 2014).

<sup>78</sup> SAN FRANCISCO, CA ADMIN. CODE ch. 12W, §§ 12W.3, 12W.4.

<sup>79</sup> WASHINGTON, D.C. CODE §32-131.01 (2008)

<sup>80</sup> SEATTLE, WA MUN. CODE tit. 14, ch. 14.16 et seq.

<sup>81</sup> PORTLAND, OR LAWS ch. 9.01.010 et seq.

<sup>82</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8.

<sup>83</sup> JERSEY CITY, NJ ORD., ch. 3 art. VI et seq.

<sup>84</sup> CITY OF NEWARK, NJ FILE #13-2010 (on file with author)

<sup>85</sup> CONN. GEN. STAT. §§ 31-57r - 31-57w.

<sup>86</sup> NEW YORK, NY. ADMIN. CODE tit. 20 ch. 8 . Amended by Int. 0001-2014.

<sup>87</sup> NEW YORK, NY. ADMIN. CODE, tit. 20, ch. 8, § 20-912(h) as amended by Amended by Int. 0001-2014 ("Family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner), *available at* [http://www.nyc.gov/html/dca/downloads/pdf/Int1a-Legislation\\_Details\\_With\\_Text.pdf](http://www.nyc.gov/html/dca/downloads/pdf/Int1a-Legislation_Details_With_Text.pdf).

<sup>88</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-914(2), *available at* [https://www.thenycalliance.org/ul/QA\\_NYC\\_Earned\\_Sick\\_Time\\_Act.pdf](https://www.thenycalliance.org/ul/QA_NYC_Earned_Sick_Time_Act.pdf).

<sup>89</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(b); N.Y.C. tit. 20, ch. 8 20-913(1) as amended by New York City Council Int. 0001-2014. (The amendment also strikes the provision that excluded employers that are business establishments classified in sector 31 32 or 33 of the North American Industry Classification System).

New York City Council Int. 0001-2014 § 12, amending Section 7 of local law number 46 for year 2014; *See Paid Sick Leave: What Employers Need to Know*, NYC DEPARTMENT OF CONSUMER AFFAIRS 2 (2014), [http://www.nyc.gov/html/dca/downloads/pdf/Employers\\_PaidSickLeaveOnePager.pdf](http://www.nyc.gov/html/dca/downloads/pdf/Employers_PaidSickLeaveOnePager.pdf).

<sup>91</sup> *See* NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(1).

<sup>92</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(b), (h).

<sup>93</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-912(e)-(f).

<sup>94</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-912(f); N.Y.C. tit. 20, ch. 8, § 20-913; *see Paid Sick Leave: What Employers Need to Know*, NYC DEPARTMENT OF CONSUMER AFFAIRS 1 (2014),

[http://www.nyc.gov/html/dca/downloads/pdf/Employers\\_PaidSickLeaveOnePager.pdf](http://www.nyc.gov/html/dca/downloads/pdf/Employers_PaidSickLeaveOnePager.pdf). Also exempt are work study participants, defined “hourly professionals” and independent contractors.

<sup>95</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-915. Employers are not permitted to require or coerce employees to work additional hours to make up time they take as sick leave. *Id.*

<sup>96</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-915.

<sup>97</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-915; For example see Fair Labor Standards Act 29 U.S.C.A. § 207 (establishing a work week of 40 hours and requiring compensation for employment in excess of those hours at a rate not less than one and one-half times the regular rate at which he is employed. This applies to employees engaged in interstate commerce.); See N.Y. Labor Law § 160(3) establishing that a legal days work is 8 hours. There are exceptions for certain employees for example street surface and elevated railroad employees work day is 10 consecutive hours including one-half hour for dinner. See N.Y. Labor Law § 160(1)).

<sup>98</sup> See Fair Labor Standards Act, 29 U.S.C.A. § 207; 12 N.Y. COMP. CODES R. & REGS. § 142-2.2; *Overtime: Frequently Asked Questions*, NEW YORK STATE DEPARTMENT OF LABOR, <https://labor.ny.gov/legal/counsel/pdf/overtime-frequently-asked-questions.pdf> (last visited Apr. 3, 2014).

<sup>99</sup> N.Y. LABOR LAW §2(16) defines “domestic worker” as “a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose.” It excludes individuals working on a casual basis, a person engaged in companionship services employed by an employer or agency that is not the household using the service, or one who is a relative through blood, marriage or adoption of the employer or, if employed under a government-funded program, the individual for whom they are working.

<sup>100</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(d)(1)-(2); N.Y.C. tit. 20, ch. 8, § 20-916.

<sup>101</sup> 2010 N.Y. Sess. Laws 1313; N.Y. EXEC. LAW 292, 296

<sup>102</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(2); New York Labor Law § 161(1)-(2).

<sup>103</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-916 (“Comparable benefits include vacation time, personal time, sick time, and holiday and Sunday time pay at reasonable rates.”). Note that construction and grocery industry CBAs are only required to expressly waive requirements of this law and do not have to provide a comparable benefit.

<sup>104</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch.8, § 20-914(3)(b).

<sup>105</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-914(3)(c) (including a doctor’s note that does not specify the nature of employee or their family members condition).

<sup>106</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(b).

<sup>107</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(e).

<sup>108</sup> NEW YORK, NY. ADMIN. CODE. tit. 20, ch. 8, §§ 20-918, 20-919.

<sup>109</sup> NEW YORK, NY. ADMIN. CODE. tit. 20, ch. 8, § 20-913(3)(j).

<sup>110</sup> *Id.*

<sup>111</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, §§ 20-920,20-925 as amended by New York City Council Int. 0001-2014.

<sup>112</sup> New York City Council Int. No 97-A Section 5.

<sup>113</sup> *Id.*

<sup>114</sup> See Pepins, *supra* note 54, at 2 (finding that “The percentage of workers who underwent mammography, Pap test, endoscopy at recommended intervals, had seen a doctor during the prior 12 months or had at least one visit to a health care provider during the prior 12 months was significantly higher among those with paid sick leave as compared with those without sick leave.”); Won Kim Cook, *supra* note 54, at 777.

<sup>115</sup> See *Making the Business Case for Cancer Prevention and Early Detection*, C-CHANGE 6 (2008), [http://cchangetogether.org/Websites/cchange/images/Risk\\_Reduction/C-Change\\_Business\\_Case\\_White\\_Paper\\_%281%29.pdf](http://cchangetogether.org/Websites/cchange/images/Risk_Reduction/C-Change_Business_Case_White_Paper_%281%29.pdf) (cancer-related costs place severe financial demands on the patient. For example, lung cancer patients spend 272 hours on treatment in first

year, and breast cancer patients spend 66.2 hours. Cancer patients also spend around \$2.3 billion in time to travel, wait, and receive inpatient and outpatient treatment).

<sup>116</sup> Elise Gould & Doug Hall, *Paid Sick Days: Measuring the small cost for New York City Businesses*, ECONOMIC POLICY INSTITUTE (Oct. 16, 2012), <http://www.epi.org/publication/pm194-paid-sick-days-measuring-small-cost-new-york/> (estimating that a paid sick leave policy providing five sick days would cost between .12 and .92 percent of sales, varying by sector, if employees used all five paid sick days). Compare U.S. Bureau of Labor Statistics, *Program Perspectives on Paid Leave*, 2(2) PROGRAM PERSPECTIVES 3 (Mar. 2010), [http://www.bls.gov/opub/perspectives/program\\_perspectives\\_vol2\\_issue2.pdf](http://www.bls.gov/opub/perspectives/program_perspectives_vol2_issue2.pdf) (“In March 2009, the average cost for sick leave per employee hour worked for private sector employers was 23 cents.” For higher salaried occupations the average cost was 53 cents per employee hour worked while for service occupations it was just 8 cents per employee hour worked), *Making the Business Case for Cancer Prevention and Early Detection*, C-CHANGE 3 (2008), [http://cchangetogether.org/Websites/cchange/images/Risk\\_Reduction/C-Change\\_Business\\_Case\\_White\\_Paper\\_%281%29.pdf](http://cchangetogether.org/Websites/cchange/images/Risk_Reduction/C-Change_Business_Case_White_Paper_%281%29.pdf) (“Cancer costs the U.S. \$89 billion in direct costs in 2007; lost productivity due to cancer costs \$18.2 billion dollars; premature cancer-related death cost an astounding \$112.0 billion.” Estimates are from the National Institute of Health).

<sup>117</sup> Albor Ruiz, *Paid Sick Days Act makes business sense, says report by Small Business United*, DAILY NEWS (June 6, 2012), <http://www.nydailynews.com/new-york/paid-sick-days-act-business-sense-report-small-business-united-article-1.1090302>.

<sup>118</sup> SMALL BUSINESS NETWORK FOR PAID SICK DAYS (2013), <http://smallbiz4paysickdays.org/>.

<sup>119</sup> Id.; See also The Associated Press, So What? Small Business Unfazed by Paid Sick Time, NPR (2014), <http://www.npr.org/templates/story/story.php?storyId=291511012&ft=1&f> (“Ray Fitzgibbon expected Seattle’s law, which took effect in September 2012, to create a nightmare for his Synergy HomeCare business, but he’s been able to afford paying a sick worker and a replacement. “I had used the arithmetic based on a worst-case scenario and it was scary. And in hindsight, it just hasn’t turned out like that,” he says.”).

<sup>120</sup> Melissa Maynard, *Pew Charitable Trusts, Cities, States Face Off on Mandatory Paid Sick Leave*, STATELINE (May 13, 2013), <http://www.pewstates.org/projects/stateline/headlines/cities-states-face-off-on-mandatory-paid-sick-leave-85899475500>; Jena McGregor, *Should Paid Sick Leave be Mandated for all Employees?*, WASHINGTON POST (Apr. 11, 2013), [http://articles.washingtonpost.com/2013-04-11/national/38448538\\_1\\_sick-leave-workers-march-13;Wage,-sick-leave,-environmental-issues-top-state-agendas](http://articles.washingtonpost.com/2013-04-11/national/38448538_1_sick-leave-workers-march-13;Wage,-sick-leave,-environmental-issues-top-state-agendas), NATIONAL RESTAURANT ASSOCIATION (Jan. 23, 2013), <http://www.restaurant.org/News-Research/News/Wage,-sick-leave,-environmental-issues-top-state-a>; Martha C. White, *One organization estimates that a national paid sick leave mandate would cost \$35.5 billion annually: New Mandates for Paid Sick Leave Raise Hackles*, NBC NEWS (2012), <http://www.nbcnews.com/business/new-mandates-paid-sick-leave-raise-hackles-279724?franchiseSlug=businessmain>.

<sup>121</sup> OFFICE OF THE D.C. AUDITOR, AUDIT OF THE ACCRUED SICK AND SAFE LEAVE ACT OF 2008, at 16 (2013), available at <http://dcauditor.org/sites/default/files/DCA092013.pdf>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 17.

<sup>124</sup> *Id.* at 19.

<sup>125</sup> Cindy Schmitt Minniti, *Expect More Employees to Get ‘Sick’ in 2014*, FORBES (Jan. 13, 2014), <http://www.forbes.com/sites/theemploymentbeat/2014/01/13/expect-more-employees-to-get-sick-in-2014/>; Angus Loten & Sarah E. Needleman, *Laws on Paid Sick Leave Divide Business*, THE WALL STREET JOURNAL (Feb. 5, 2014), <http://online.wsj.com/news/articles/SB10001424052702304851104579363280478647404>

<sup>126</sup> Drago & Lovell, *San Francisco’s Paid Sick Leave Ordinance: Outcomes for Employers and Employees*, Institute for Women’s Policy Research 8-9 (2011) (this is less than the 5- 9 sick days provided under the law); see also Ross O. Barthold & Jason L. Ford, *Paid Sick Leave: Prevalence, Provision, and Usage among Full-Time Workers in Private Industry 4*(2012) available at <http://www.bls.gov/opub/mlr/cwc/paid-sick-leave-prevalence-provision-and-usage-among-full-time-workers-in-private-industry.pdf> (finding that employees in financial, information, trade, transportation,

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utilities, professional, and business fields used 4 sick days per year while those in leisure, hospitality, and construction industries used on average 2 days per year.)

<sup>127</sup> Drago & Lovell, *supra* note 136, at 8-9.

<sup>128</sup> *Id.* at 12.

<sup>129</sup> *Paid Sick Days and the Seattle Economy*, THE MAIN STREET ALLIANCE OF WASHINGTON 1-2 (2013), <http://washington.mainstreetalliance.org/files/2013/09/PSD-1-Year-Report-Final.pdf>.

<sup>130</sup> *Id.* at 2.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 3-4.

<sup>136</sup> N.Y. CIVIL SERVICE LAW §§159-b, c.

<sup>137</sup> *Id.* (Does not apply to employees to New York City)

<sup>138</sup> 2013 Journal of Proceedings, Broome County Legislature Regular Session, October 17, 2013, Resolution No. 412 (on file with author).

<sup>139</sup> *Id.*

<sup>140</sup> Per Phone Call with Claudia Edwards, Director of Broome County Health Department on January 13, 2014.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Reso 2013-180: Change Town Employee Policy Manual/ Paid Leave Time for Cancer Screenings, Regular Town Board Meeting December 10, 2013 (on file with author).

<sup>145</sup> U.S. DEPT OF HEALTH AND HUMAN SERVICES, PRESIDENT CLINTON AND FIRST LADY HILARY RODHAM CLINTON PROMOTE SCREENINGS AND TREATMENTS FOR BREAST, CERVICAL, AND OTHER CANCERS, ARCHIVE.HHS.GOV (Jan. 4, 2001), <http://archive.hhs.gov/news/press/2001pres/20010104.html>; Copy of the memo can be accessed here <http://www.gpo.gov/fdsys/pkg/WCPD-2001-01-08/pdf/WCPD-2001-01-08-Pg11.pdf>. This policy was established by a presidential memorandum issued by President Clinton in 2001. City of Boston, 4 HR. Cancer Screening For A Healthy Boston Workforce, [http://www.cityofboston.gov/Images\\_Documents/Cancer%20Screening%20Form\\_tcm3-34447.pdf](http://www.cityofboston.gov/Images_Documents/Cancer%20Screening%20Form_tcm3-34447.pdf) (last visited Apr. 4, 2014). This policy was implemented by the Mayor of Boston through an executive order. A public employee is required to fill out a form after the screening in order to receive the four hour paid leave.

<sup>146</sup> N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12) (for a town the law will only apply to the area of the town and outside of villages that may be within the town. N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12)(b)).

<sup>147</sup> N.Y. CONST. art. IX(c); *Stubbart v. Monroe County*, 58 A.D. 2d 25, 29 (N.Y.S.2d 1977).

<sup>148</sup> *See Stubbart v. Monroe County*, at 29 (N.Y.S.2d 1977); Rebecca Golubock Watson, *Defending Paid Sick Leave in New York City*, 19 J. L. POL'Y 973 (2011).

<sup>149</sup> N.Y. MUN, HOME RULE LAW § 10(1)(a)(1).

<sup>150</sup> *See* N.Y. CONST. art. 9, § 2(c).

<sup>151</sup> *Nassau County Town of North Hempstead v. County of Nassau*, 32 Misc. 3d 809, 815 (NY Sup. 2011)

<sup>152</sup> N.Y. LABOR LAW § 650. *See* N.Y.S. LABOR LAW § 651(7) (defining wages as “allowances, in the amount determined in accordance with the provisions of this article, for gratuities and, when furnished by the employer to employees, for meals, lodging, apparel, and other such items, services and facilities.”).

<sup>153</sup> *See Wage and Hour Law*, N.Y. DEPT. OF LABOR, <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm> (last visited May 8,

2014) (stating wage supplements include vacation or holiday pay, paid sick leave, reimbursement of expenses, and other similar items.).

<sup>154</sup> See *Consol. Edison Co. of N.Y. v. Town of Red Hook*, 456 N.E.2d 487, 490 (N.Y. 1983) (“The intent to pre-empt need not be express. It is enough that the Legislature has impliedly evinced a desire to do so. A desire to pre-empt may be implied from a declaration of State policy by the Legislature or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area.” Citations omitted. *Id.* at 490).

<sup>155</sup> See *Ba Mar Inc. v. County of Rockland*, 164 A.D. 2d 605, 566 N.Y.S. 2d 298 (1991) (discussing state preemption of local regulation relating to mobile homes); see also Susan Schultz Laluk and Sharon P. Stiller, *Employment Law*, 59 SYRLR 735, Part III B (2009) (stating that amendment to cancer screening paid leave provisions expanded the provisions to essentially all public employees.).

<sup>156</sup> See *Consol. Edison Co. of N.Y. v. Town of Red Hook*, at 491 (N.Y. 1983) (Finding local law regulating the siting and permitting of a major steam power plant inconsistent with state public service law that requires a person planning to operate and construct a major steam power plant obtain a certificate from a state created Siting Board. This state process included requirements for site studies, a detailed application, pre-application procedures, and hearings before the board. *Id.* at 489.).

<sup>157</sup> 29 U.S.C.A. § 2601 et seq.

<sup>158</sup> *Wage and Hour Division, FMLA Frequently Asked Questions*, UNITED STATES DEP’T OF LABOR, <http://www.dol.gov/whd/fmla/fmla-faqs.htm> (last visited Dec. 17, 2013).

<sup>159</sup> 29 U.S.C.A. § 2651(b) (“Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act or any amendment made by this Act.”).

<sup>160</sup> 29 U.S.C. § 1001 et seq; 29 C.F.R. Part 2509 et seq.

<sup>161</sup> *Shea v. Wells Fargo Armored Service Corp.*, 810 F.2d 372, 376 (N.Y. 1987).

<sup>162</sup> 29 C.F.R. § 2510.3-1(b) (emphasis added) (defining “payroll practice” as “(1) Payment by an employer of compensation on account of work performed by an employee including compensation at a rate in excess of the normal rate of compensation on account of performance of duties under other than ordinary circumstances, such as—(i) overtime pay’ (ii) shift premiums, (iii) holiday premiums, (iv) weekend premiums; (2) Payment of an employee’s normal compensation, out of the employer’s general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment); and (3) Payment of compensation, out of the employer’s general assets, on account of periods of time during which the employee, although physically and mentally able to perform his or her duties and not absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment) performs no duties; for example-- (i) Payment of compensation while an employee is on vacation or absent on a holiday, including payment of premiums to induce employees to take vacations at a time favorable to the employer for business reasons, (ii) Payment of compensation to an employee who is absent while on active military duty, (iii) Payment of compensation while an employee is absent for the purpose of serving as a juror or testifying in official proceedings, (iv) Payment of compensation on account of periods of time during which an employee performs little or no productive work while engaged in training (whether or not subsidized in whole or in part by Federal, State or local government funds), and (v) Payment of compensation to an employee who is relieved of duties while on sabbatical leave or while pursuing further education.”).

<sup>163</sup> *Shea v. Wells Fargo Armored Service Corp.*, at 376 (N.Y. 1987), citing Dep’t of Labor ERISA Opinion Letter 79-89A; DOL Advisory Option, 2004-08A ERISA § 3(1) (July 2, 2004), <http://www.dol.gov/ebsa/regs/aos/ao2004-08a.html> (last visited Apr. 4, 2014).

<sup>164</sup> 29 U.S.C. § 151 et seq.

<sup>165</sup> N.Y. LAW ch. 31, art. 20, § 700.

<sup>166</sup> 29 U.S.C.A. § 158(d).

<sup>167</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-916 (“Comparable benefits include vacation time, personal time, sick time, and holiday and Sunday time pay at reasonable rates.”).

<sup>168</sup> JERSEY CITY, NJ ORD. ch. 3, art. VI, § 3-52.9.



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<sup>169</sup> SEATTLE, WA MUN. CODE tit. 14, ch 14.16.120.

<sup>170</sup> SEATTLE, WA MUN. CODE Title 14, Chapter 14.16.110.

<sup>171</sup> N.Y. LABOR LAW § 198-c (preempted by *People v Saxton*, 907 N.Y.S.2d 316, 319 (2010)); *Wage and Hour Law*, NEW YORK STATE DEP'T OF LABOR, <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm> (last visited Apr. 4, 2014).

<sup>172</sup> N.Y. LABOR LAW § 195(5); See *Glenville Gage Co., Inc. v. Industrial Bd. Of Appeals of New York*, Dep't of Labor, 70 A.D.2d 283, 284 (1979); *Fringe Benefits*, NEW YORK DEP'T OF LABOR, <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/fringben.shtm> (last visited Apr. 4, 2014).

<sup>173</sup> NEW YORK, NY. ADMIN. CODE tit. 20, ch. 8, § 20-913(3)(h)(i).

<sup>174</sup> See *BOOTS ET AL., EMPLOYERS' PERSPECTIVE ON SAN FRANCISCO'S PAID SICK LEAVE POLICY*, THE URBAN INSTITUTE 8(2009), *available at* [http://www.urban.org/UploadedPDF/411868\\_sanfrancisco\\_sick\\_leave.pdf](http://www.urban.org/UploadedPDF/411868_sanfrancisco_sick_leave.pdf) (noting that the paid sick leave ordinance enacted in San Francisco coincided with a minimum wage increase and health insurance mandate and that "in a city where labor cost increases were piling up, the PLSO did not help.").

<sup>175</sup> Tom W. Smith & Jibum Kim, *Paid Sick Days: Attitudes and Experiences*, NORC AT THE UNIVERSITY OF CHICAGO 1 (2010), <http://www.publicwelfare.org/resources/DocFiles/psd2010final.pdf>.

<sup>176</sup> *Id.* at 9.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 15.

<sup>179</sup> See, e.g., CONN. GEN. STAT. § 31-57r(6).

<sup>180</sup> See, e.g., Conn. Paid Sick Leave Stat. § 31-57v (allowing employees to file a complaint with the Labor Commissioner where an employer can be subject to a hearing and, if found to have taken retaliatory measures face civil penalties- while the employee may be awarded relief that could include payment of back wages, rehiring, and reestablishment of benefits).

<sup>181</sup> See, e.g., San Francisco Paid Sick Leave Ordinance § 12W.5(a) (requiring its office of Labor Standards Enforcement to provide employers with a notice to post in the work place in "all languages spoken by more than 5% of the San Francisco workforce."), *available at* <https://www.oregonrla.org/Documents/SF%20Paid%20Sick%20Leave%20Ordinance.pdf>.

<sup>182</sup> See, e.g., SHRR § 70-310(1) (requiring that each time wages are paid employers provide written notification in physical or electronic form of updated amount of paid leave available), *available at* [http://www.seattle.gov/civilrights/documents/PSST\\_Rules\\_Final06-29-12.pdf](http://www.seattle.gov/civilrights/documents/PSST_Rules_Final06-29-12.pdf).

<sup>183</sup> See, e.g., Jersey City Ordinance § 3-52(C)(4) ("An employer may not require, as a condition of an employee's taking sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is absent."), *available at* [http://jerseycitynj.gov/uploadedFiles/Public\\_Notices/Agenda/City\\_Council\\_Agenda/2013/2013\\_Ordinance\\_1st\\_Reading/Agenda%20Document\(13\).pdf](http://jerseycitynj.gov/uploadedFiles/Public_Notices/Agenda/City_Council_Agenda/2013/2013_Ordinance_1st_Reading/Agenda%20Document(13).pdf).

<sup>184</sup> See, e.g., City of Portland, tit. 9, § 9.01.040 (I) (Portland, Oregon's paid sick leave policy states employees are to provide notice to the employer in writing as soon as possible if the use is of sick time is foreseeable), *available at* <http://nwlaborpress.org/wp-content/uploads/2013/04/Sick-Leave-AS-AMENDED.pdf>.

<sup>185</sup> See, e.g., SHRR § 70-370 (Seattle requires reasonable documentation when an employee has used paid sick leave for more than three consecutive days. It states that reasonable documentation can include documents signed by a health care provider that indicates the sick time was necessary but an employer may not require that the document explain the nature of the illness).

<sup>186</sup> See, e.g., N.Y.C. Earned Sick Time Act, § 20-913(3)(c) (For example, New York City's Earned Sick Time Act explicitly allows employers to keep existing paid leave policies but does not require them to provide additional paid sick time so long as the following terms are met: the leave can be used for the same purposes as outlined in the Act, under the same conditions, and meets the minimum amount required by the Act, whether or not the employee uses it for purposes provided for by the Act).

<sup>187</sup> Michael Neibauer, *Sick and Safe Leave hardship waiver an option for D.C. businesses*, WASHINGTON BUSINESS JOURNAL (May 28, 2013), <http://www.bizjournals.com/washington/blog/2013/05/sick-and-safe-leave-hardship-waiver-an.html?page=all>.

<sup>188</sup> NEW YORK STATE DEP'T OF HEALTH DIVISION OF CHRONIC DISEASE PREVENTION, INFORMATION FOR ACTION #2013-7(2013), *available at* [http://www.health.ny.gov/statistics/prevention/injury\\_prevention/information\\_for\\_action/docs/2013-07\\_ifa\\_report.pdf](http://www.health.ny.gov/statistics/prevention/injury_prevention/information_for_action/docs/2013-07_ifa_report.pdf) (identifying small worksites as those with less than 500 employees).

<sup>189</sup> *Id.*

<sup>190</sup> *Current Employment Statistics*, NEW YORK STATE DEP'T OF LABOR (Dec. 2013), <http://labor.ny.gov/stats/cesemp.asp> (only includes nonfarm industries).

<sup>191</sup> MATTKE ET AL., WORKPLACE WELLNESS PROGRAMS STUDY: FINAL REPORT xiii (2013) (report discusses primary and secondary prevention. It describes primary prevention), *available at* [http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR200/RR254/RAND\\_RR254.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR254/RAND_RR254.pdf).

<sup>192</sup> See 42 U.S.C.A. § 300ff-4(j). The Public Health Service Act refers to wellness programs as “a program of health promotion and disease prevention.”

<sup>193</sup> MATTKE ET AL, *supra* note 201, at xxi.

<sup>194</sup> *Id.* at xx-xxi (2013).

<sup>195</sup> 45 C.F.R. § 146.21(f)(1).

<sup>196</sup> 45 C.F.R. § 146.21(b)(2).

<sup>197</sup> 45 C.F.R. § 146.21(c)(3).

<sup>198</sup> 45 C.F.R. § 146.21(b)(2)(ii); See also *Health-Contingent Wellness Programs*, UNITED HEALTH CARE (2013), [http://www.uhc.com/live/uhc\\_com/Assets/Documents/WellnessHealthContingentPrograms.pdf](http://www.uhc.com/live/uhc_com/Assets/Documents/WellnessHealthContingentPrograms.pdf).

<sup>199</sup> 45 C.F.R. § 146.21(c)(3).

<sup>200</sup> See 45 C.F.R. § 146.21(f); 78 Fed Reg. 3316178, 33187-90.

<sup>201</sup> MATTKE ET AL, *supra* note 201, at 79.

<sup>202</sup> MATTKE ET AL, *supra* note 201, at 71-72.

<sup>203</sup> *Id.*

<sup>204</sup> Nanci Hellmich, *Small Businesses Get Creative to Cut Health Cost*, USA TODAY, (2013), <http://www.usatoday.com/story/money/business/2013/12/13/wellness-programs-small-businesses/3862759/> (employees earning an extra hour paid time off for every 33,000 steps taken during the first three months of the year.).

<sup>205</sup> See Hannon,, *supra* note 20 at s11.

<sup>206</sup> *Id.* at s11. (also known as an assessment of health risks with feedback or AHRF).

<sup>207</sup> Task Force on Community Preventive Services, *Recommendations for Worksite-based Interventions to Improve Workers' Health*, 38 AM. J. PREV. MED., at S232, S233 (2010); NAT'L BUSINESS COALITION ON HEALTH, HEALTH RISK APPRAISALS AT THE WORKSITE: BASICS FOR HRA DECISION MAKING 10 (2006), *available at* [http://nbch.kma.net/NBCH/files/ccLibraryFiles/Filename/000000000042/HRA\\_Updated\\_080303.pdf](http://nbch.kma.net/NBCH/files/ccLibraryFiles/Filename/000000000042/HRA_Updated_080303.pdf); AMERICA'S HEALTH INSURANCE PLANS, INNOVATIONS IN PREVENTION, WELLNESS AND RISK REDUCTION 22 (2008), *available at* [http://www.ahip.org/uploadedFiles/Content/Departments/Policy\\_and\\_Research/Innovations\\_Report\\_Series/Innovations-in-Prevention-Wellness-and-Risk-Reduction.pdf#page=23](http://www.ahip.org/uploadedFiles/Content/Departments/Policy_and_Research/Innovations_Report_Series/Innovations-in-Prevention-Wellness-and-Risk-Reduction.pdf#page=23) [hereinafter INNOVATIONS IN PREVENTION](Discussing Medica's annual health reminder that reached out to members due or overdue for preventive health care service. It resulted in an increase cervical and colorectal cancer screenings).

<sup>208</sup> Task Force on Community Preventive Services, *supra* note 207, at S232, S233.

<sup>209</sup> Task Force on Community Preventive Services, *supra* note 207 at S232, S233; INNOVATIONS IN PREVENTION, *supra* note 217, at 8-9. (“Although AHRF can be offered as an independent intervention, it is often applied to a broader worksite health promotion program as a gateway intervention. When used as a gateway intervention, the assessment is typically conducted one or more times, and the feedback is offered to the participant along with additional intervention components to address the

identified health risks. These may include: detailed information about health risks; information about programs directed toward the prevention or treatment of the risks; or referrals to programs or providers addressing the risks. In addition to providing intervention components targeted at risks that were specifically identified in the assessment, other interventions may also be offered. These include health education; enhanced access to physical activity; nutritious food alternatives; or policy interventions such as smoking bans or restrictions.”).

<sup>210</sup> MATTKE ET AL, *supra* note 201, at 78-79.

<sup>211</sup> *Id.* at 78. .

<sup>212</sup> *Id.* at 88, 92.

<sup>213</sup> *Wellness Incentive Programs*, CANCER ACTION NETWORK AMERICAN CANCER SOCIETY 4, <http://www.acscan.org/pdf/healthcare/implementation/background/WellnessIncentivePrograms.pdf> (last visited Apr. 5, 2014).

<sup>214</sup> Williams McPeck et al, *Bringing Wellness to the Small Employer*, *The Art of Health Promotion* 9 (2009) (on file with author); See Hannon, *supra* note 20, at s10.

<sup>215</sup> *Healthier Worksite Initiative: Health Risk Appraisals*, THE CTR. FOR DISEASE CONTROL AND PREVENTION, [http://www.cdc.gov/nccdphp/dnpao/hwi/programdesign/health\\_risk\\_appraisals.htm](http://www.cdc.gov/nccdphp/dnpao/hwi/programdesign/health_risk_appraisals.htm) (last visited Apr. 5, 2014).

<sup>216</sup> *Id.*

<sup>217</sup> MATTKE ET AL, *supra* note 201, at 35.

<sup>218</sup> *Workplace Health Promotion: Employee Health Surveys*, THE CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workplacehealthpromotion/assessment/surveys/index.html> (last visited Apr. 5, 2014).

<sup>219</sup> AMERICA’S HEALTH INSURANCE PLANS, *INNOVATIONS IN PREVENTION, WELLNESS AND RISK REDUCTION* 9 (2008), available at [http://www.ahip.org/uploadedFiles/Content/Departments/Policy\\_and\\_Research/Innovations\\_Report\\_Series/Innovations-in-Prevention-Wellness-and-Risk-Reduction.pdf#page=23](http://www.ahip.org/uploadedFiles/Content/Departments/Policy_and_Research/Innovations_Report_Series/Innovations-in-Prevention-Wellness-and-Risk-Reduction.pdf#page=23).

<sup>220</sup> Rachel Henke et al., *Employers’ Role in Cancer Prevention and Treatment-Developing Successful Metrics for Use by the CEO Roundtable on Cancer*, *Population Health Management* 302 (2013) (on file with author).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> THE WELLNESS COUNCIL OF AMERICA(WELCOA), *FIRST OF ITS KIND: THE STATE OF NEBRASKA’S INTEGRATED PLAN FOR HEALTH 2* (2012), [https://www.welcoa.org/freeresources/pdf/case\\_study\\_nebraska.pdf](https://www.welcoa.org/freeresources/pdf/case_study_nebraska.pdf). [hereinafter WELCOA].The Wellness Plan and wellness options is administered by a third party, Health Fitness Corporation, see AN EXEMPLARY WELLNESS INITIATIVE: THE STATE OF NEBRASKA, HEALTH FITNESS CORP., 1 (2012) [http://healthfitness.com/wp-content/uploads/2012/04/HF\\_casestudy\\_SToNE\\_4-12-12.pdf](http://healthfitness.com/wp-content/uploads/2012/04/HF_casestudy_SToNE_4-12-12.pdf)

<sup>225</sup> WELCOA, *supra* note 234, at 4.

<sup>226</sup> *Id.*, at 8.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*, at 7; *Active Employee Options Guide 2013-2014 Plan Year*, NEBRASKA,GOV, <http://das.nebraska.gov/Benefits/Active-2013/options.html> (last visited Apr. 5, 2014).

<sup>229</sup> WELCOA, *supra* note 234, at 7,8.

<sup>230</sup> *Id.* at 13.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 14.A third party administrator, Health Fitness Corporation, collects data and information from *wellnessoptions* participants and uses that information for data and research, subject to its privacy policy. See HEALTH FITNESS CORPORATION, *PRIVACY POLICY*, NEBRASKA’S DIVISION OF ADMINISTRATIVE SERVICES <https://www.liveforlife.net/go.hcn?hcn2~privacy>

<sup>233</sup> WELCOA, *supra* note 234, at 12, 14.

<sup>234</sup> STATE OF CONNECTICUT CONTROLLER'S OFFICE, HEALTHCARE OPTIONS PLANNER 2011-2012, at 5 (2011), *available at*

<http://www.osc.ct.gov/empret/healthin/2011hcplan/SOCActiveEmployees2011final8.26.pdf> [hereinafter Healthcare Options Planner]

<sup>235</sup> *Id.* at 6.

<sup>236</sup> See V-BID Center, *V-BID in Action: A Profile of Connecticut's Health Enhancement Plan*, UNIVERSITY OF MICHIGAN 1 (2013), [http://seiu2001.org/files/2013/02/V-BID-brief\\_CT-HEP-final.pdf](http://seiu2001.org/files/2013/02/V-BID-brief_CT-HEP-final.pdf)

<sup>237</sup> *Id.* at 2.

<sup>238</sup> *Id.* at 2

<sup>239</sup> WELCOA, *supra* note 234, at 8.

<sup>240</sup> Healthcare Options Planner, *supra* note 244, at 6 (choosing these conditions because they make up a large part of total health care costs and are shown to respond well to disease education and counseling).

<sup>241</sup> *Focusing on Wellness & Prevention*, JOHNSON & JOHNSON, <http://www.jnj.com/caring/patient-stories/focusing-wellness-prevention> (last visited Apr. 10, 2014); *Our Strategic Framework: Culture of Health*, JOHNSON & JOHNSON, <http://www.jnj.com/caring/citizenship-sustainability/strategic-framework/culture-of-health> (last visited Apr. 10, 2014).

<sup>242</sup> See 26 C.F.R. § 54.9802-1(f); 78 Fed. Reg. 33161; See Pub. L. No. 104-191, tit. I incorporating nondiscrimination provisions into the Employment Retirement Income Security Act (ERISA), The Public Health Services Act, and the Internal Revenue Code. See 29 U.S.C.A. § 1182 (health status-related factors include health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, and disability); 42 U.S.C.A. § 300gg-4; 26 U.S.C. § 9802.

<sup>243</sup> See 26 C.F.R. § 54.9802-1(f). Similarly situated" individual means groups based on *bona fide* employment classification consistent with the employer's usual business practice. 29 C.F.R. § 2590.702(d). This includes part time vs. full time employees, employee groups based on geographic locations, date of hire, and so forth. *Id.*

<sup>244</sup> See 26 CFR §54.9802-1(f)(ii) ("If none of the conditions for obtaining a reward under a wellness program is based on an individual satisfying a standard that is related to a health factor (or if a wellness program does not provide a reward), the wellness program is a participatory wellness program.").

<sup>245</sup> 26 C.F.R. §54.9802 f(1)(ii)(B).

<sup>246</sup> 26 C.F.R. §54.9802 f(1)(iii).

<sup>247</sup> N.Y. EXEC. LAW §§ 291(1), 296(1)(a)-(b), *available at*

<http://www.dhr.ny.gov/sites/default/files/doc/hrl.pdf>. There are similar requirements under federal law. See 29 U.S.C.A. § 621 et seq. prohibiting employers from failing or refusing to hire or to discharge an individual or discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of their age. This protects individuals of at least 40 years of age. 29 U.S.C.A. § 631. See Americans with Disabilities Act, Pub. L. No. 110-325; amending the Internal Revenue Code, Public Health Service Act, and the Employment Retirement Income Security Act. See 42 U.S.C.A. § 12112(a) prohibiting discrimination "against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." "Covered entity" is defined as an employer, employment agency, labor organization, or joint labor-management committee. 42 U.S.C.A. § 12111; 42 U.S.C.A. § 2000e-2 (an employer cannot discriminate against an employee with regards to compensation, terms, conditions, or privileges of employment based on race, color, religion, sex, or national origin).

<sup>248</sup> Testimony of Judith L. Lichtman, Senior Advisor of National Partnership for Women and Families Before the Equal Employment Opportunity Commission, NAT'L P'SHIP FOR WOMEN & FAMILIES 2 (May 8, 2013),

[http://go.nationalpartnership.org/site/DocServer/JLL\\_Testimony\\_EEOC\\_Meeting\\_on\\_Employer\\_Wellness\\_Programs.pdf?docID=12661](http://go.nationalpartnership.org/site/DocServer/JLL_Testimony_EEOC_Meeting_on_Employer_Wellness_Programs.pdf?docID=12661) (Certain incentives, particularly for health contingent wellness programs, need to be carefully crafted so that they do not have a discriminatory impact on

employees. For example, testimony before the Equal Employment Opportunity Commission (EEOC) pointed out that wellness programs tying rewards or fees to health benchmarks may have a disproportionate impact on women and racial minorities. . These groups are more likely to have medical conditions such as obesity, heart disease, and diabetes than other groups that may affect their ability to meet wellness benchmarks- the unintended impact being that the program merely shifts costs based on health benchmarks than truly combating health conditions and improving employee health.).

<sup>249</sup> Press Release, U.S. Equal Employment Opportunity Commission, *Employer Wellness Programs Need Guidance to Avoid Discrimination* (May 8, 2013), available at <http://www.eeoc.gov/eeoc/newsroom/release/5-8-13.cfm>.

<sup>250</sup> *Id.*; see Ida L. Castro, Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, (2000) available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (“A wellness program is ‘voluntary’ as long as an employer neither requires participation nor penalizes employees who do not participate.”); See, e.g., 42 U.S.C.A. § 2000ff-1 of GINA allowing for acquisition of genetic information where health or genetic services are offered by employer, including as part of a wellness program, so long as the employee provides “prior, knowing, voluntary, and written authorization” and employee and certain entities receive individually identifiable information and not disclosed to employer except in aggregate terms. See 42 U.S.C.A. § 12112(4)(B) “A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite. A covered entity may make inquiries into the ability of an employee to perform job related functions.” There are requirements as to the use and confidentiality of this information, See 42 U.S.C.A. § 12112 (3)(B)(C).

<sup>251</sup> 29 C.F.R. § 1635.8(b)(2) (information regarding a person’s family medical history or genetic information may be requested as part of a voluntary wellness program if it includes health or genetic services so long as “the provision of genetic information by the individual is voluntary, meaning the covered entity neither requires the individual to provide genetic information nor penalizes those who choose not to provide it.”). See also Carol Lepman et al., *Employee Benefit Plan Review- Meyerowitz, Wellness Plan Design in Light of Health Care Reform and Other Laws*, DLA PIPER LLP 2 (2012), [http://www.dlapiper.com/files/upload/03843\\_Employee\\_Benefit\\_Plan\\_Review.pdf](http://www.dlapiper.com/files/upload/03843_Employee_Benefit_Plan_Review.pdf).

<sup>251</sup> 42 U.S.C. § 12112(d)(4). A covered entity can conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site. Information obtained must be treated as confidential medical records. *Id.*

<sup>252</sup> *Id.* .

<sup>253</sup> *De Minimis Fringe Benefits*, IRS, <http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/De-Minimis-Fringe-Benefits> (last updated Jan. 28, 2014).

<sup>254</sup> 26 U.S.C.A. § 132(a).

<sup>255</sup> *De Minimis Fringe Benefits*, IRS, <http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/De-Minimis-Fringe-Benefits> (last updated Jan. 28, 2014).

<sup>256</sup> 26 U.S.C.A. § 132 (c)(1)(B).

<sup>257</sup> 26 U.S.C.A. § 132 (c)(1)(A).

<sup>258</sup> *Id.* (defining gross profit percentage as “the percent which (i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of (ii) the aggregate sale price of such property.”)

<sup>259</sup> 26 U.S.C.A. § 106(a) (there are limitations for employer contributions to any Archer MSA); Aimee E. Dreiss et al., *Federal Tax Implications of Wellness Incentives and Rewards*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT (2013), <http://www.shrm.org/legalissues/federalresources/pages/federal-tax-implications-wellness.aspx>.

<sup>260</sup> Aimee E. Dreiss et al., *Federal Tax Implications of Wellness Incentives and Rewards*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT (2013), <http://www.shrm.org/legalissues/federalresources/pages/federal-tax-implications-wellness.aspx>.

<sup>261</sup> *Id.*

<sup>262</sup> 45 C.F.R. § 164.500(a); 45 C.F.R. § 164.104(a)(1)-(3); *Worksite Wellness and HIPAA Privacy*, PUBLIC HEALTH LAW CTR. 1 (2010), <http://publichealthlawcenter.org/sites/default/files/resources/ship-fs-ww-hipaaprivacy-2010.pdf>; Tonie Bitseff, *What employers with self-funded health plans need to know about the new HIPAA/HITECH Act Omnibus Rule*, NIXON PEABODY 1 (2013), [http://www.nixonpeabody.com/files/155838\\_Benefits\\_Alert\\_20MAR2013\\_.pdf](http://www.nixonpeabody.com/files/155838_Benefits_Alert_20MAR2013_.pdf).

<sup>263</sup> Health Enhancement Research Organization et al, *Joint Consensus Statement: Guidance for a Reasonably Designed, Employer Sponsored Wellness Program Using Outcomes-Based Incentives*, 54 JOEM 889-896, 891 (2012), available at [http://www.acoem.org/uploadedFiles/Public\\_Affairs/Policies\\_And\\_Position\\_Statements/JOEM%20Joint%20Consensus%20Statement.pdf](http://www.acoem.org/uploadedFiles/Public_Affairs/Policies_And_Position_Statements/JOEM%20Joint%20Consensus%20Statement.pdf).

<sup>264</sup> U.S. Dep't of Health & Human Services, *Health Information Privacy: Business Associates*, HHS.GOV, <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/businessassociates.html> (last visited Apr. 14, 2014) (stating that a business associate is a person or entity that works with a "covered entity" under HIPAA and performs functions that use or disclose protected health information); See 45 C.F.R. § 164.105(a)(1), (a)(2)(iii)(C)(2) (setting standards for business associate contracts).

<sup>265</sup> *Plan Sponsor Guide: HIPAA Privacy Rule*, AETNA 3 (2005), <https://www1.aetna.com/producer/data/HIPAA.pdf>. HIPAA privacy requirements do not apply to group health plans if the plan is self-insured by the employer for less than 50 participants (so long as it does not use a third party administrator). See 42 U.S.C.A. § 1320d; *HIPAA Portability and Privacy*, SECURE ONE (2003), <http://www.secureoneinc.com/regulatory/hipaa.htm>.

<sup>266</sup> *Types of Coverage: Group Health*, BENEFITS SPECIALIST OF NEW YORK, [http://www.benefitspecialistsny.com/coverage\\_group\\_health.asp](http://www.benefitspecialistsny.com/coverage_group_health.asp) (last visited Apr. 14, 2014).

<sup>267</sup> *Id.*

<sup>268</sup> N.Y. INS. LAW § 3231(a)(1). Community rating will apply to plans issued or renewed as of January 1, 2016 that cover up to 100 members or employees (excluding spouses and dependents).

<sup>269</sup> N.Y. INS. LAW § 3239(c). If the plan is not community rated, these incentives are allowed, but the discounted premium rate, rebate, or refund "shall be based on actuarial demonstration that the wellness program can reasonably be expected to result in the overall good health and well-being of the group." See N.Y. INS. LAW § 3239(c)(4).

<sup>270</sup> 29 U.S.C.A. § 1001 et seq.

<sup>271</sup> 29 U.S.C.A. § 1002(1) (defining, in part, an employee welfare benefit plan as a plan, fund, or program that is established or maintained by an employer or employee organization for the purpose of providing employees through the purchase of insurance or otherwise medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services).

<sup>272</sup> See U.S. DEP'T OF LABOR, *Field Assistance Bulletin No. 3008-02*, DOL.GOV (2008), <http://www.dol.gov/ebsa/regs/fab2008-2.html> (other laws include HIPAA's wellness exception rules and nondiscrimination requirements and COBRA); Lepman, *supra* note 263, at 1.

<sup>273</sup> See 29 U.S.C.A. § 1002; *ERISA and Employee Welfare Benefits: When ERISA Applies and What That Means*, BENEFIT RESOURCES INC. 7 (2012), [http://www.benefitresourcesinc.net/files/News/Miscellaneous/ERISA\\_White\\_Paper.pdf](http://www.benefitresourcesinc.net/files/News/Miscellaneous/ERISA_White_Paper.pdf).

<sup>274</sup> *ERISA and Employee Welfare Benefits: When ERISA Applies and What That Means*, BENEFIT RESOURCES INC. 7 (2012), [http://www.benefitresourcesinc.net/files/News/Miscellaneous/ERISA\\_White\\_Paper.pdf](http://www.benefitresourcesinc.net/files/News/Miscellaneous/ERISA_White_Paper.pdf).

<sup>275</sup> 29 U.S.C.A. § 158(d).

<sup>276</sup> See Appeal of Cumberland Valley School Dist. from Final Order of Pa. Labor Relations Bd. in Case No. Pera-M-6966-C, 394 A.2d 946 (1978); MATHIASON ET AL., *EMPLOYER MANDATED WELLNESS INITIATIVES: THE CONTINUUM FROM VOLUNTARY TO MANDATORY PLANS 2008-2009*, at 8 (2008), available at <http://www.littler.com/files/press/pdf/18868.pdf>.

<sup>277</sup> N.Y. LABOR LAW § 201-d(6) ("Nothing in this section shall prohibit an organization or employer from offering, imposing or having in effect a health, disability or life insurance policy that makes distinctions

between employees for the type of coverage or the price of coverage based upon the employees' recreational activities or use of consumable products, provided that differential premium rates charged employees reflect a differential cost to the employer and that employers provide employees with a statement delineating the differential rates used by the carriers providing insurance for the employer, and provided further that such distinctions in type or price of coverage shall not be utilized to expand, limit or curtail the rights or liabilities of any party with regard to a civil cause of action.”).

<sup>278</sup> *Id.*

<sup>279</sup> Hannon, *supra* note 20, at s12. See also McPECK, *supra* note 229, at 2, 3 (2009) (Smaller employers may feel unable to adopt comprehensive wellness programs due to cost, inability to find service providers or vendors for wellness programs, or limited staff to administer the program).

<sup>280</sup> Nat'l Small Business Ass'n & Humana, *Workplace Wellness Programs in Small Business: Impacting the Bottom Line 5* (2012), available at <http://www.nsba.biz/wp-content/uploads/2012/09/wellness-survey-v3.pdf>

<sup>281</sup> Caron Beesley, *Why and How to Implement a Health and Wellness Program for Your Employees*, SBA.GOV (2012), <http://www.sba.gov/community/blogs/why-and-how-implement-health-and-wellness-program-your-employees>

<sup>282</sup> McPECK, *supra* note 228, at 3; Hannon, *supra* note 20, at s12; Beesley, *supra* note 296 (Small Business Development Centers are local organizations associated with the U.S. Small Business Administration).

<sup>283</sup> *Healthy Maine Streets*, MAINE DEV. FOUND., [http://www.mdf.org/mdc\\_hms.php](http://www.mdf.org/mdc_hms.php) (last visited Apr. 14, 2014)

<sup>284</sup> *Id.*; Phone conversation with Anne Ball & Robin Hetzler December 12<sup>th</sup> 2013 at 10 a.m. (This is a project of the Maine Development Foundation with funding from the Center for Disease Control and Prevention's Community Transformation Grants. The type of wellness provided involved varies depending on the community and can include local practitioners and clinics.)

<sup>285</sup> Phone conversation with Anne Ball & Robin Hetzler, December 12, 2014 at 10 a.m..

<sup>286</sup> Phone conversation with Anne Ball & Robin Hetzler, December 12, 2014 at 10 a.m.; *Where Wellness Works*, HEALTH MAINE STREETS <http://www.healthymainestreets.info/> (last visited Apr. 14, 2014).

<sup>287</sup> Phone conversation with Anne Ball & Robin Hetzler December 12, 2014 at 10 a.m.

<sup>288</sup> *Workplace Health Promotion: Assessment*, CTR. FOR DISEASE CONTROL AND PREVENTION <http://www.cdc.gov/workplacehealthpromotion/assessment/index.html> (last visited Apr. 14, 2014).

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> Nat'l Small Business Ass'n & Humana, *Workplace Wellness Programs in Small Business: Impacting the Bottom Line 6* (2012), available at <http://www.nsba.biz/wp-content/uploads/2012/09/wellness-survey-v3.pdf>

<sup>292</sup> *Id.*

<sup>293</sup> MATTKE ET AL, *supra* note 201, at 21.

<sup>294</sup> *Id.* at 24.

<sup>294</sup> *What is the Community Guide?*, THE GUIDE TO CMTY. PREVENTIVE SERVS., <http://www.thecommunityguide.org/about/index.html> (last updated Oct. 17, 2013).

<sup>295</sup> *Cancer Prevention and Control: Client-Oriented Interventions to Increase Breast, Cervical, and Colorectal Cancer Screening*, THE GUIDE TO CMTY. PREVENTIVE SERVS., <http://www.thecommunityguide.org/cancer/screening/client-oriented/index.html> (last updated Jan. 3, 2014). See also Peggy A. Hannon, *Interventions to Improve Cancer Screening Opportunities in the Workplace*, 35 AM. J. PREV. MED., at s10, s12 (2008), available at <http://www.thecommunityguide.org/cancer/screening/client-oriented/Hannon.S10-S13.pdf>.

<sup>296</sup> *Work@Health Program*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workathealth/> (last updated Jan. 31, 2014); *National Healthy Worksite Program*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nationalhealthyworksite/index.html> (last updated Feb. 10, 2014).

<sup>297</sup> *About Work@Health*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workathealth/about.html> (last updated Nov. 6, 2013).

<sup>298</sup> *Employer Training*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workathealth/employer-training.html> (last updated Jan. 10, 2014) (to be eligible for training, the employer must have 20 or more employees, have been in operation for at least a year, have internet connection, offer health insurance, have minimal experience in workplace health, and be a U.S. based, domestic employer); *Resources*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workathealth/resources.html> (last updated Nov. 6, 2013)

<sup>299</sup> *National Healthy Worksites Program*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nationalhealthyworksites/about/index.html> (last updated Aug. 9, 2013).

<sup>300</sup> General Information: Comprehensive Workplace Health Programs to Address Physical Activity, Nutrition, and Tobacco Use in the Workplace, CTR. FOR DISEASE CONTROL AND PREVENTION 2, 3 (2013), <http://www.cdc.gov/nationalhealthyworksites/docs/nhwp-general-faq.pdf>

<sup>301</sup> *Become a Healthy Worksites*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/nationalhealthyworksites/join/index.html> (last updated Aug. 9, 2013)

<sup>302</sup> Coordination with an insurer or benefit provider may open up additional funds to develop a wellness program.

<sup>303</sup> THE MASSACHUSETTS DEP'T OF PUBLIC HEALTH, *A MODEL WELLNESS GUIDE: INVESTING IN GOOD HEALTH* 6 (2012), available at <http://www.mass.gov/eohhs/docs/eohhs/wellness-tax-credit/model-wellness-guide.pdf>. [hereinafter *INVESTING IN GOOD HEALTH*].

<sup>304</sup> MATTKE ET AL, *supra* note 201, at 96-97;; *INVESTING IN GOOD HEALTH*, *supra* note 319, at 6.

<sup>305</sup> *Id.* at 73.

<sup>306</sup> *INVESTING IN GOOD HEALTH*, *supra* note 319, at 6.

<sup>307</sup> MATTKE ET AL, *supra* note 201, at 73

<sup>308</sup> Sabatino et al, *supra* note 26, at 109.

<sup>309</sup> *Id.*

<sup>310</sup> *Working Toward Wellness: Creating Consumer-Friendly Workplace Wellness Programs*, FAMILIES USA 3 (2012), [http://familiesusa.org/sites/default/files/product\\_documents/Wellness-Programs-Profiles.pdf](http://familiesusa.org/sites/default/files/product_documents/Wellness-Programs-Profiles.pdf).

<sup>311</sup> *Healthier Worksites Initiative: Ethics Guidelines for Development and Use of Health Assessments*, CTR. FOR DISEASE CONTROL AND PREVENTION, [http://www.cdc.gov/nccdphp/dnpao/hwi/programdesign/ethics\\_guidelines.htm](http://www.cdc.gov/nccdphp/dnpao/hwi/programdesign/ethics_guidelines.htm) (last updated Jan. 6, 2010).

<sup>312</sup> See *INVESTING IN GOOD HEALTH*, *supra* note 319, at 19.

<sup>313</sup> *Workplace Health Promotion: Breast Cancer Screening*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/workplacehealthpromotion/evaluation/topics/breast-cancer.html> (last updated Oct. 23, 2013). Factors to look at include absenteeism, employee turnover, productivity, participation rates, disability costs, workers compensation costs, and health insurance claims costs. See *INVESTING IN GOOD HEALTH*, *supra* note 319, at 19.

<sup>314</sup> *INVESTING IN GOOD HEALTH*, *supra* note 319, at 19.



# Appendices

## Appendix A:

### The Earned Sick Time Act, N.Y.C., N.Y., CODE § 20-911 et seq. (2013)

Enacted on June 26, 2013 this is the original law providing earned sick time to employees in New York City.



# The New York City Council

City Hall  
New York, NY 10007

## Legislation Text

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### Int. No. 97-A

By Council Members Brewer, Lappin, Mendez, Palma, Gonzalez, Ferreras, Koppell, Recchia, Gentile, Mark-Viverito, Rodriguez, James, Williams, Levin, Rose, Jackson, Chin, Barron, Ulrich, Mealy, Nelson, Vann, Crowley, Foster, Lander, Van Bramer, Dromm, Garodnick, Rivera, Cabrera, Eugene, Koslowitz, Vacca, Weprin, Reyna, Arroyo, King, Richards, Wills, Gennaro, Dickens, Comrie and the Public Advocate (Mr. de Blasio)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of sick time earned by employees.

Be it enacted by the Council as follows:

Section 1. Legislative intent. The City Council finds that nearly every worker at some time during each year will need time off from work to take care of his or her health needs or the health needs of family members. Providing the right to earned sick time will therefore have a positive effect on the public health of the City and lessen the spread of and exposure to diseases. The Council further finds that supporting a healthy workforce will foster greater employee retention and productivity, and recognizes that responsible businesses that already have policies that allow time off that amounts to at least the minimum requirements under this law, and that can be taken for the same reasons and under the same conditions as enumerated in this legislation, will not be required to provide additional sick time. Providing sick time to workers at a time when the economy is improving, and ensuring that workers' jobs are protected when they need to take a sick day, strikes the right balance and will result in a more prosperous, safe and healthy City.

§ 2. Section 2203 of the New York city charter is hereby amended by adding a new subdivision e, relettering current subdivisions e through g as subdivisions f through h, and amending relettered subdivisions f and h to read as follows:

(e) The commissioner shall have all powers as set forth in chapter 8 of title 20 of the administrative

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code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time.

[e] (f) The commissioner, in the performance of said functions, including those functions pursuant to subdivision e of this section, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of laws relating to deceptive or unconscionable trade practices, or of related laws, and to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department.

[(f)] (g) The commissioner shall exercise the powers of a commissioner of public markets under the agriculture and markets law with respect to open air markets.

[(g)] (h) (1) Notwithstanding any inconsistent provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to this charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations , and to order equitable relief for and payment of monetary damages in connection with enforcement of chapter 8 of title 20 of the administrative code. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this subdivision shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

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(3) For the purposes of this subdivision, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

(4) Notwithstanding any other inconsistent provision of law, powers conferred upon the department by this subdivision may be exercised by the office of administrative trials and hearings consistent with orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of this charter.

§ 3. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

**CHAPTER 8**

**EARNED SICK TIME ACT**

**§ 20-911 Short title.**

**§ 20-912 Definitions.**

**§ 20-913 Right to sick time; accrual.**

**§ 20-914 Use of sick time.**

**§ 20-915 Changing schedule.**

**§ 20-916 Collective bargaining agreements.**

**§ 20-917 Public disasters.**

**§ 20-918 Retaliation and interference prohibited.**

**§ 20-919 Notice of rights.**

**§ 20-920 Employer records.**

**§ 20-921 Confidentiality and nondisclosure.**

**§ 20-922 Encouragement of more generous policies; no effect on more**

**generous policies.**

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§ 20-923 Other legal requirements.

§ 20-924 Enforcement and penalties.

§ 20-911 Short title. This chapter shall be known and may be cited as the “Earned Sick Time Act.”

§ 20-912 Definitions. When used in this chapter, the following terms shall be defined as follows:

a. “Calendar year” shall mean a regular and consecutive twelve month period, as determined by an employer.

b. “Chain business” shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least fifteen.

c. “Child” shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

d. “Domestic partner” shall mean any person who has a registered domestic partnership pursuant to section 3-240 of the code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

e. “Domestic worker” shall mean any “domestic worker” as defined in section 2(16) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis.

f. “Employee” shall mean any “employee” as defined in section 190(2) of the labor law who is employed for hire within the city of New York for more than eighty hours in a calendar year who performs work on a full-time or part-time basis, including work performed in a transitional jobs program pursuant to section 336-f of the social services law, but not including work performed as a participant in a work experience

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program pursuant to section 336-c of the social services law, and not including those who are employed by (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207.

g. "Employer" shall mean any "employer" as defined in section 190(3) of the labor law, but not including (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; (iii) the city of New York or any local government, municipality or county or any entity governed by general municipal law section 92 or county law section 207; or (iv) any employer that is a business establishment classified in section 31, 32 or 33 of the North American Industry Classification System. In determining the number of employees performing work for an employer for compensation during a given week, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted, provided that where the number of employees who work for an employer for compensation per week fluctuates, business size may be determined for the current calendar year based upon the average number of employees who worked for compensation per week during the preceding calendar year, and provided further that in determining the number of employees performing work for an employer that is a chain business, the total number of employees in that group of establishments shall be counted.

h. "Family member" shall mean an employee's child, spouse, domestic partner or parent, or the child or parent of an employee's spouse or domestic partner.

i. "Health care provider" shall mean any person licensed under federal or New York state law to provide medical or emergency services, including, but not limited to, doctors, nurses and emergency room personnel.

j. "Hourly professional employee" shall mean any individual (i) who is professionally licensed by the New York state education department, office of professions, under the direction of the New York state board of

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regents under education law sections 6732, 7902 or 8202, (ii) who calls in for work assignments at will determining his or her own work schedule with the ability to reject or accept any assignment referred to them and (iii) who is paid an average hourly wage which is at least four times the federal minimum wage for hours worked during the calendar year.

k. "Paid sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter and is compensated at the same rate as the employee earns from his or her employment at the time the employee uses such time, except that an employee who volunteers or agrees to work hours in addition to his or her normal schedule will not receive more in paid sick time compensation than his or her regular hourly wage if such employee is not able to work the hours for which he or she has volunteered or agreed even if the reason for such inability to work is one of the reasons in section 20-914 of this chapter. In no case shall an employer be required to pay more to an employee for paid sick time than the employee's regular rate of pay at the time the employee uses such paid sick time, except that in no case shall the paid sick time hourly rate be less than the hourly rate provided in section 652(1) of the labor law.

l. "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

m. "Public disaster" shall mean an event such as fire, explosion, terrorist attack, severe weather conditions or other catastrophe that is declared a public emergency or disaster by the president of the United States, the governor of the state of New York or the mayor of the city of New York.

n. "Public health emergency" shall mean a declaration made by the commissioner of health and mental hygiene pursuant to section 3.01(d) of the New York city health code or by the mayor pursuant to section 24 of the executive law.

o. "Public service commission" shall mean the public service commission established by section 4 of the public service law.

p. "Retaliation" shall mean any threat, discipline, discharge, demotion, suspension, reduction in

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employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed under this chapter.

q. "Sick time" shall mean time that is provided by an employer to an employee that can be used for the purposes described in section 20-914 of this chapter, whether or not compensation for that time is required pursuant to this chapter.

r. "Spouse" shall mean a person to whom an employee is legally married under the laws of the state of New York.

§ 20-913 Right to sick time; accrual. a. All employees have the right to sick time pursuant to this chapter.

1. All employers that employ fifteen or more employees and all employers of one or more domestic workers shall provide paid sick time to their employees in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section.

2. All employees not entitled to paid sick time pursuant to this chapter shall be entitled to unpaid sick time in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section.

3. All employers that employ fifteen to nineteen employees, and all employers of one or more domestic workers, shall provide unpaid sick time in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section during any period in which, pursuant to the schedule set forth in section 7 of the local law which enacted this section, such employers are not required to provide paid sick time but employers that employ twenty or more employees are required to provide paid sick time.

b. All employers shall provide a minimum of one hour of sick time for every thirty hours worked by an employee, other than a domestic worker who shall accrue sick time pursuant to paragraph 2 of subdivision d of this section. Employers shall not be required under this chapter to provide more than forty hours of sick time



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for an employee in a calendar year. For purposes of this subdivision, any paid days of rest to which a domestic worker is entitled pursuant to section 161(1) of the labor law shall count toward such forty hours. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of sick time at a faster rate or use of sick time at an earlier date than this chapter requires.

c. An employer required to provide paid sick time pursuant to this chapter who provides an employee with an amount of paid leave, including paid time off, paid vacation, paid personal days or paid days of rest required to be compensated pursuant to section 161(1) of the labor law, sufficient to meet the requirements of this section and who allows such paid leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, is not required to provide additional paid sick time for such employee whether or not such employee chooses to use such leave for the purposes included in subdivision a of section 20-914 of this chapter. An employer required to provide unpaid sick time pursuant to this chapter who provides an employee with an amount of unpaid or paid leave, including unpaid or paid time off, unpaid or paid vacation, or unpaid or paid personal days, sufficient to meet the requirements of this section and who allows such leave to be used for the same purposes and under the same conditions as sick time required pursuant to this chapter, is not required to provide additional unpaid sick time for such employee whether or not such employee chooses to use such leave for the purposes set forth in subdivision a of section 20-914 of this chapter.

d. 1. For an employee other than a domestic worker, sick time as provided pursuant to this chapter shall begin to accrue at the commencement of employment or on the effective date of this local law, whichever is later, and an employee shall be entitled to begin using sick time on the one hundred twentieth calendar day following commencement of his or her employment or on the one hundred twentieth calendar day following the effective date of this local law, whichever is later. After the one hundred twentieth calendar day of employment or after the one hundred twentieth calendar day following the effective date of this local law, whichever is later, such employee may use sick time as it is accrued.

2. In addition to the paid day or days of rest to which a domestic worker is entitled pursuant to section

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161(1) of the labor law, such domestic worker shall also be entitled to two days of paid sick time as of the date that such domestic worker is entitled to such paid day or days of rest and annually thereafter, provided that notwithstanding any provision of this chapter to the contrary, such two days of paid sick time shall be calculated in the same manner as the paid day or days of rest are calculated pursuant to the provisions of section 161(1) of the labor law.

e. Employees who are not covered by the overtime requirements of New York state law or regulations, including the wage orders promulgated by the New York commissioner of labor pursuant to article 19 or 19-A of the labor law, shall be assumed to work forty hours in each work week for purposes of sick time accrual unless their regular work week is less than forty hours, in which case sick time accrues based upon that regular work week.

f. The provisions of this chapter do not apply to (i) work study programs under 42 U.S.C. section 2753, (ii) employees for the hours worked and compensated by or through qualified scholarships as defined in 26 U.S.C. section 117, (iii) independent contractors who do not meet the definition of employee under section 190 (2) of the labor law, and (iv) hourly professional employees.

g. Employees shall determine how much earned sick time they need to use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day.

h. Except for domestic workers, unused sick time as provided pursuant to this chapter shall be carried over to the following calendar year, provided that no employer shall be required to (i) allow the use of more than forty hours of sick time in a calendar year or (ii) carry over unused paid sick time if the employee is paid for any unused sick time at the end of the calendar year in which such time is accrued and the employer provides the employee with an amount of paid sick time that meets or exceeds the requirements of this chapter for such employee for the immediately subsequent calendar year on the first day of the immediately subsequent calendar year.

i. Nothing in this chapter shall be construed as requiring financial or other reimbursement to an

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employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued sick time that has not been used.

j. If an employee is transferred to a separate division, entity or location in the city of New York, but remains employed by the same employer, such employee is entitled to all sick time accrued at the prior division, entity or location and is entitled to retain or use all sick time as provided pursuant to the provisions of this chapter. When there is a separation from employment and the employee is rehired within six months of separation by the same employer, previously accrued sick time that was not used shall be reinstated and such employee shall be entitled to use such accrued sick time at any time after such employee is rehired, provided that no employer shall be required to reinstate such sick time to the extent the employee was paid for unused accrued sick time prior to separation and the employee agreed to accept such pay for such unused sick time.

§ 20-914 Use of sick time . a. An employee shall be entitled to use sick time for absence from work due to:

1. such employee's mental or physical illness, injury or health condition or need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;

or

2. care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventive medical care; or

3. closure of such employee's place of business by order of a public official due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed by order of a public official due to a public health emergency.

b. An employer may require reasonable notice of the need to use sick time. Where such need is foreseeable, an employer may require reasonable advance notice of the intention to use such sick time, not to exceed seven days prior to the date such sick time is to begin. Where such need is not foreseeable, an employer

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may require an employee to provide notice of the need for the use of sick time as soon as practicable.

c. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of sick time was authorized by subdivision a of this section. For sick time used pursuant to paragraphs 1 and 2 of subdivision a of this section, documentation signed by a licensed health care provider indicating the need for the amount of sick time taken shall be considered reasonable documentation and an employer shall not require that such documentation specify the nature of the employee's or the employee's family member's injury, illness or condition, except as required by law.

d. Nothing herein shall prevent an employer from requiring an employee to provide written confirmation that an employee used sick time pursuant to this section.

e. An employer shall not require an employee, as a condition of taking sick time, to search for or find a replacement worker to cover the hours during which such employee is utilizing sick time.

f. Nothing in this chapter shall be construed to prohibit an employer from taking disciplinary action, up to and including termination, against a worker who uses sick time provided pursuant to this chapter for purposes other than those described in this section.

§ 20-915 Changing schedule. Upon mutual consent of the employee and the employer, an employee who is absent for a reason listed in subdivision a of section 20-914 of this chapter may work additional hours during the immediately preceding seven days if the absence was foreseeable or within the immediately subsequent seven days from that absence without using sick time to make up for the original hours for which such employee was absent, provided that an adjunct professor who is an employee at an institute of higher education may work such additional hours at any time during the academic term. An employer shall not require such employee to work additional hours to make up for the original hours for which such employee was absent or to search for or find a replacement employee to cover the hours during which the employee is absent pursuant to this section. If such employee works additional hours, and such hours are fewer than the number of

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hours such employee was originally scheduled to work, then such employee shall be able to use sick time provided pursuant to this chapter for the difference. Should the employee work additional hours, the employer shall comply with any applicable federal, state or local labor laws.

§ 20-916 Collective bargaining agreements . a. The provisions of this chapter shall not apply to any employee covered by a valid collective bargaining agreement if (i) such provisions are expressly waived in such collective bargaining agreement and (ii) such agreement provides for a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof. Comparable benefits shall include, but are not limited to, vacation time, personal time, sick time, and holiday and Sunday time pay at premium rates.

b. Notwithstanding subdivision a of this section, the provisions of this chapter shall not apply to any employee in the construction or grocery industry covered by a valid collective bargaining agreement if such provisions are expressly waived in such collective bargaining agreement.

§ 20-917 Public disasters. In the event of a public disaster, the mayor may, for the length of such disaster, suspend the provisions of this chapter for businesses, corporations or other entities regulated by the public service commission.

§ 20-918 Retaliation and interference prohibited . No employer shall engage in retaliation or threaten retaliation against an employee for exercising or attempting to exercise any right provided pursuant to this chapter, or interfere with any investigation, proceeding or hearing pursuant to this chapter. The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter shall include, but not be limited to, the right to request and use sick time, file a complaint for alleged violations of this chapter with the department, communicate with any person about any violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of

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this chapter, or inform any person of his or her potential rights under this chapter.

§ 20-919 Notice of rights . a. An employer shall provide an employee at the commencement of employment with written notice of such employee's right to sick time pursuant to this chapter, including the accrual and use of sick time, the calendar year of the employer, and the right to be free from retaliation and to bring a complaint to the department. Such notice shall be in English and the primary language spoken by that employee, provided that the department has made available a translation of such notice in such language pursuant to subdivision b of this section. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.

b. The department shall create and make available notices that contain the information required pursuant to subdivision a of this section and such notices shall allow for the employer to fill in applicable dates for such employer's calendar year. Such notices shall be posted in a downloadable format on the department's website in Chinese, English, French-Creole, Italian, Korean, Russian, Spanish and any other language deemed appropriate by the department.

c. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil fine in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 20-920 Employer records. Employers shall retain records documenting such employer's compliance with the requirements of this chapter for a period of two years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time, in furtherance of an investigation conducted pursuant to this chapter.

§ 20-921 Confidentiality and nondisclosure. No person or entity may require the disclosure of details relating to an employee's or his or her family member's medical condition as a condition of providing sick time under this chapter. Health information about an employee or an employee's family member obtained solely for the purposes of utilizing sick time pursuant to this chapter shall be treated as confidential and shall not be

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disclosed except by the affected employee, with the permission of the affected employee or as required by law.

§ 20-922 Encouragement of more generous policies; no effect on more generous policies . a.

Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a sick time policy more generous than that which is required herein.

b. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time to an employee than required herein.

c. Nothing in this chapter shall be construed as diminishing the rights of public employees regarding sick time as provided pursuant to federal, state or city law.

§ 20-923 Other legal requirements . a. This chapter provides minimum requirements pertaining to sick time and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees.

b. Nothing in this chapter shall be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation, nor shall anything in this chapter be construed to diminish or impair the rights of an employee or employer under any valid collective bargaining agreement.

§ 20-924 Enforcement and penalties . a. The department shall enforce the provisions of this chapter. In effectuating such enforcement, the department shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this chapter and investigate complaints received by the department in a timely manner.

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within 270 days of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to

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the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

d. The department shall have the power to impose penalties provided for in this chapter and to grant an employee or former employee all appropriate relief. Such relief shall include: (i) for each instance of sick time taken by an employee but unlawfully not compensated by the employer: three times the wages that should have been paid under this chapter or two hundred fifty dollars, whichever is greater; (ii) for each instance of sick time requested by an employee but unlawfully denied by the employer and not taken by the employee or unlawfully conditioned upon searching for or finding a replacement worker, or for each instance an employer requires an employee to work additional hours without the mutual consent of such employer and employee in violation of section 20-915 of this chapter to make up for the original hours during which such employee is absent pursuant to this chapter: five hundred dollars; (iii) for each instance of unlawful retaliation not including discharge from employment: full compensation including wages and benefits lost, five hundred dollars and equitable relief as appropriate; and (iv) for each instance of unlawful discharge from employment: full compensation including wages and benefits lost, two thousand five hundred dollars and equitable relief, including reinstatement, as appropriate.

e. Any entity or person found to be in violation of the provisions of sections 20-913, 20-914, 20-915 or 20-918 of this chapter shall be liable for a civil penalty payable to the city not to exceed five hundred dollars for the first violation and, for subsequent violations that occur within two years of any previous violation, not to



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exceed seven hundred and fifty dollars for the second violation and not to exceed one thousand dollars for each succeeding violation.

f. The department shall annually report on its website the number and nature of the complaints received pursuant to this chapter, the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated and the number of notices of violations issued, the number and nature of adjudications pursuant to this chapter, and the average time for a complaint to be resolved pursuant to this chapter.

§ 4. Effect of invalidity; severability. If any section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 5. Independent Budget Office report. Pursuant to section 260 of the New York City Charter, no later than thirty months after employers with twenty or more employees are required to provide sick time to employees pursuant to section 3 of this local law, the Independent Budget office ("IBO") shall report to the Mayor and the Council and post on its website a report presenting data related to the costs and benefits of the Earned Sick Time Act. Such report shall include to the extent practicable given available data and methodologies, but not be limited to, data regarding wage and employment rates; businesses, including small business start-up and failure rates, expenses and revenues; and infectious disease rates; and shall include to the extent practicable a comparison of New York City with surrounding counties and large cities comparable to New York City that do not provide sick time. When reporting this data, the IBO director shall ensure that IBO uses appropriate and professionally accepted methodologies for comparing similar data and identify such methodologies in the report, and shall clearly specify the extent to which the earned sick time act can properly be determined to have had an impact on any of the data analyzed. The report shall be contingent on the

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availability to IBO of data the IBO director determines to be necessary to complete such report. The IBO director shall be authorized to secure such information, data, estimates and statistics from the agencies of the City as the director determines to be necessary in the preparation of such report, and such agencies shall provide such information to the extent that it is available in a timely fashion.

§ 6. Independent Budget Office review and determination. On December 16, 2013, the Independent Budget Office shall submit to the Council and the Mayor and post on its website a determination stating whether the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the "Index") is at or above its January 2012 level. If such determination states that the Index is below its January 2012 level, the IBO shall make and submit a determination every June 16 and December 16 of each year thereafter, until it determines that the Index is at or above its January 2012 level.

§ 7. This local law shall take effect pursuant to the following schedule:

- (1) If the December 16, 2013 Independent Budget Office ("IBO") determination shows that the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the "Index") is at or above its January 2012 level, then:
  - (a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2014;
  - (b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on October 1, 2015; and
  - (c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added

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by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2014.

(2) If on December 16, 2013, the Index is not at or above its January 2012 level, but on June 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on October 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on April 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on October 1, 2014.

(3) If on June 16, 2014, the Index is not at or above its January 2012 level, but on December 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2015;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on October 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of

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this local law on April 1, 2015.

- (4) If on December 16, 2014 the Index is not at or above its January 2012 level, then the IBO shall make a determination every June 16<sup>th</sup> and December 16<sup>th</sup> of each year thereafter until such Index is at or above its January 2012 level, and the effective date of this local law for all employers shall be on the succeeding October 1 or April 1, respectively, after the first such determination that the Index is at or above its January 2012 level.
- (5) Notwithstanding the preceding paragraphs (1) through (4), in the case of employees covered by a valid collective bargaining agreement in effect on the effective date prescribed by such preceding paragraphs, this local law shall take effect on the date of the termination of such agreement.
- (6) This local law shall take effect pursuant to the preceding paragraphs, and the commissioner of consumer affairs shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.

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Appendix B: The Earned Sick Time Act, N.Y.C., N.Y.,  
CODE § 20-911 et seq. (2013) (amended 2014)

Enacted on March 20, 2014 this law amended the original Earned Sick Time Act (Appendix A1), expanding access to paid sick leave.

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By Council Members Chin, The Speaker (Council Member Mark-Viverito), Cohen, Constantinides, Cornegy, Crowley, Cumbo, Dromm, Eugene, Ferreras, Johnson, Kallos, King, Koo, Koslowitz, Lancman, Lander, Levin, Levine, Menchaca, Miller, Reynoso, Richards, Rodriguez, Rose, Rosenthal, Torres, Van Bramer, Barron, Espinal, Gibson, Palma, Dickens, Maisel, Mendez, Williams, Vacca, Cabrera and Garodnick (by request of the Mayor and the Manhattan Borough President)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to the provision of sick time earned by employees, and section 7 of local law number 46 for the year 2013, relating to such sick time, in relation to the effective date of such local law, and to repeal section 6 of local law number 46 for the year 2013, relating to a determination of the Independent Budget Office.

Be it enacted by the Council as follows:

Section 1. Subdivision (e) of section 2203 of the New York city charter, as added by local law number 46 for the year 2013, is amended to read as follows:

(e) The commissioner shall have all powers as set forth in chapter 8 of title 20 of the administrative code relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violations of such chapter upon his or her own initiative.

§ 2. Section 2203 of the New York city charter is amended by adding a new subdivision (i) to read as follows:

(i) Notwithstanding any inconsistent provision of law, the mayor may designate an agency other than the department to enforce the provisions of chapter 8 of title 20 of the administrative code of the city of New York. Upon such designation, such agency shall be deemed to have all powers of the commissioner as set forth in this section in connection with the enforcement of such chapter.

§ 3. Section 20-771 of the administrative code of the city of New York, as added by local law number 33 for the year 2003, is amended to read as follows:

§ 20-771 Statement of employee rights and employer obligations under city, state and federal law. a. Every licensed employment agency under the jurisdiction of the commissioner and engaged in the job placement of domestic or household employees shall provide to each applicant for employment as a domestic or household employee and his or her prospective employer, before job placement is arranged, a written

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statement indicating the rights of such employee and the obligations of his or her employer under city, state and federal law. Such statement of rights and obligations shall embody provisions of city, state and federal laws that pertain to domestic or household employees, both in their capacity as workers in New York city, New York state and the United States and in their capacity specifically as domestic or household employees in New York city, New York state and the United States. Such statement of rights and obligations shall include, but not be limited to, a general description of employee rights and employer obligations pursuant to laws regarding minimum wage, overtime and hours of work, sick time, days of rest, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation. Such statement of rights and obligations shall be prepared and distributed by the commissioner to licensed employment agencies over which the commissioner has jurisdiction.

b. Every employment agency engaged in the job placement of domestic or household employees shall keep on file in its principal place of business for a period of three (3) years a statement, signed by the employer of a domestic or household employee whom the employment agency has placed with such employer, indicating that the employer has read and understands the statement of rights and obligations he or she received pursuant to subdivision (a) of this section.

§ 4. Subdivisions b and h of section 20-912 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

b. "Chain business" shall mean any employer that is part of a group of establishments that share a common owner or principal who owns at least thirty percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in general business law section 681; provided that the total number of employees of all such establishments in such group is at least ~~[fifteen]~~ five.

h. "Family member" shall mean an employee's child, spouse, domestic partner [or] . parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner.

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§ 5. Section 20-912 of the administrative code of the city of New York is amended by adding four new subdivisions s, t, u, and v to read as follows:

s. “Department” shall mean the department of consumer affairs or such other agency as the mayor shall designate pursuant to section 20-925 of this chapter.

t. “Grandchild” shall mean a child of an employee’s child.

u. “Grandparent” shall mean a parent of an employee’s parent.

v. “Sibling” shall mean an employee’s brother or sister, including half-siblings, step-siblings and siblings related through adoption.

§ 6. Subdivision a of section 20-913 of the administrative code of the city of New York, as amended by local law number 6 for the year 2014, is amended to read as follows:

a. All employees have the right to sick time pursuant to this chapter.

1. All employers that employ [fifteen] five or more employees [, except for any employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System,] and all employers of one or more domestic workers shall provide paid sick time to their employees in accordance with the provisions of this chapter [and the schedule set forth in section 7 of the local law which enacted this section].

2. All employees not entitled to paid sick time pursuant to this chapter shall be entitled to unpaid sick time in accordance with the provisions of this chapter [and the schedule set forth in section 7 of the local law which enacted this section].

[3. All employers that employ fifteen to nineteen employees, and all employers of one or more domestic workers, shall provide unpaid sick time in accordance with the provisions of this chapter and the schedule set forth in section 7 of the local law which enacted this section during any period in which, pursuant to the schedule set forth in section 7 of the local law which enacted this section, such employers are not required to provide paid sick time but employers that employ twenty or more employees, except for any employer that is a



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business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System, are required to provide paid sick time.]

§ 7. Subdivision c of section 20-919 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, is amended to read as follows:

c. Any person or entity that willfully violates the notice requirements of this section shall be subject to a civil [fine] penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice pursuant to this section.

§ 8. Section 20-920 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, is amended to read as follows:

§ 20-920 Employer records. Employers shall retain records documenting such employer's compliance with the requirements of this chapter for a period of [two] three years unless otherwise required pursuant to any other law, rule or regulation, and shall allow the department to access such records, with appropriate notice and at a mutually agreeable time of day, in furtherance of an investigation conducted pursuant to this chapter.

§ 9. Subdivisions b and c of section 20-924 of the administrative code of the city of New York, as added by local law number 46 for the year 2013, are amended to read as follows:

b. Any person alleging a violation of this chapter shall have the right to file a complaint with the department within [270 days] two years of the date the person knew or should have known of the alleged violation. The department shall maintain confidential the identity of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The department shall, to the extent practicable, notify such complainant that the department will be disclosing his or her identity prior to such disclosure.

c. Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation. Within thirty days of written notification of a complaint by the department, the person or entity identified in the complaint shall provide the department with a written

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response and such other information as the department may request. The department shall keep complainants reasonably notified regarding the status of their complaint and any resultant investigation. If as a result of an investigation of a complaint or an investigation conducted upon its own initiative, the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation. The commissioner shall prescribe the form and wording of such notices of violation. The notice of violation shall be returnable to the administrative tribunal authorized to adjudicate violations of this chapter.

§ 10. Chapter 8 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-925 to read as follows:

§ 20-925 Designation of agency. a. The mayor may designate an agency other than the department of consumer affairs to enforce the provisions of this chapter. Upon such designation, such agency shall be deemed to have all powers as set forth in this chapter relating to the receipt, investigation, and resolution of complaints thereunder regarding earned sick time, and the power to conduct investigations regarding violations of such chapter upon its own initiative. Such agency, in the performance of such functions, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas, receive evidence, render decisions and orders, and to receive, administer, pay over and distribute monies collected in and as a result of actions brought for violations of this chapter, and to promulgate, amend and modify rules and regulations necessary to enforce the provisions of this chapter.

b. Notwithstanding any inconsistent provision of law, such agency shall be authorized, upon due notice and hearing, to impose civil penalties for any violation of the provisions of this chapter, and to order equitable relief for and payment of monetary damages in connection with enforcement of this chapter. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by such agency.

c. Notwithstanding any inconsistent provision of law, powers conferred upon such agency by this section may be exercised by the office of administrative trials and hearings consistent with any orders of the mayor issued in accordance with subdivisions two and three of section one thousand forty-eight of the charter.

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§ 11. Section 6 of local law number 46 for the year 2013 is REPEALED.

§ 12. Section 7 of local law number 46 for the year 2013 is amended to read as follows:

§ 7. This local law shall take effect [pursuant to the following schedule:

(1) If the December 16, 2013 Independent Budget Office ("IBO") determination shows that the most recent New York City Coincident Economic Index or similar successor index as published by the Federal Reserve Bank of New York (the "Index") is at or above its January 2012 level, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local regarding paid sick time on October 1, 2015; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2014.

(2) If on December 16, 2013, the Index is not at or above its January 2012 level, but on June 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on October 1, 2014;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local regarding paid sick time on April 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on October 1, 2014.

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(3) If on June 16, 2014, the Index is not at or above its January 2012 level, but on December 16, 2014, the Index is at or above its January 2012 level as determined by the IBO, then:

(a) All employers that employ twenty or more employees must comply with the provisions of this local law on April 1, 2015;

(b) all employers that employ fifteen to nineteen employees or a domestic worker must comply with the provisions of this local law regarding paid sick time on October 1, 2016; and

(c) all employers with employees not entitled to paid sick time pursuant to chapter 8 of title 20 of the administrative code as added by section 3 of this local law, including those employers covered by paragraph 3 of subdivision a of section 20-913 of such code as added by section 3 of this local law during the period specified therein, must comply with the provisions of this local law on April 1, 2015.

(4) If on December 16, 2014 the Index is not at or above its January 2012 level, then the IBO shall make a determination every June 16th and December 16th of each year thereafter until such Index is at or above its January 2012 level, and the effective date of this local law for all employers shall be on the succeeding October 1 or April 1, respectively, after the first such determination that the Index is at or above its January 2012 level.

(5) Notwithstanding the preceding paragraphs (1) through (4),] on April 1, 2014, provided that in the case of employees covered by a valid collective bargaining agreement in effect on [the effective date prescribed by such preceding paragraphs] such date, this local law shall take effect on the date of the termination of such agreement.

[(6) This local law shall take effect pursuant to the preceding paragraphs, and the commissioner of consumer affairs shall take such measures as are necessary for its implementation, including the promulgation of rules, prior to such effective date.]

§ 13. Notwithstanding any other provision of law, an employer with fewer than twenty employees or an employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry

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Classification System shall not be subject to a civil penalty for any violation of chapter 8 of title 20 of the administrative code of the city of New York or any rule promulgated thereunder, if such violation occurs before October 1, 2014; provided, however, that the department may order any other remedy authorized pursuant to such chapter, including equitable relief, for such a violation. A first time violation of any provision of chapter 8 of title 20 of the administrative code of the city of New York, or any rule promulgated thereunder, by an employer with fewer than twenty employees or an employer that is a business establishment classified in sector 31, 32 or 33 of the North American Industry Classification System, that occurs before October 1, 2014, shall not serve as a predicate for the purposes of imposing penalties for subsequent violations occurring on or after October 1, 2014 pursuant to section 20-924 of the administrative code of the city of New York, but any second or subsequent violation of the same provision by such an employer that occurs before October 1, 2014, shall serve as a predicate for the purposes of imposing penalties for subsequent violations that occur on or after October 1, 2014.

§ 14. This local law shall take effect on April 1, 2014, provided that in the case of employees covered by a valid collective bargaining agreement in effect on such date, this local law shall take effect on the date of the termination of such agreement, and provided further that prior to April 1, 2014:

(1) the mayor may exercise the authority granted by subdivision a of section 20-925 of the administrative code of the city of New York, as added by section ten of this local law, to designate an agency other than the department of consumer affairs to enforce the provisions of chapter 8 of title 20 of the administrative code of the city of New York; and

(2) the department, as defined in subdivision s of section 20-912 of the administrative code of the city of New York, as added by section five of this local law, shall take such measures as are necessary for the implementation of chapter 8 of title 20 of the administrative code of the city of New York, as added by local law 46 for the year 2013, and as amended by local law number 6 for the year 2014, and as further amended by this local law, including the promulgation of rules.

## Appendix C: N.Y. CIV. SERV. LAW §§ 159-b, 159-c (2014)

Text of New York State's Civil Service Law §§ 159-b, 159-c, providing four hours paid leave to undertake a screening for breast or prostate cancer.

## New York State Civil Service Law §159-b. Excused leave to undertake a screening for breast cancer.

1. Every public officer, employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system shall be entitled to absent himself or herself and shall be deemed to have a paid leave of absence from his or her duties or service as such public officer or employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district, or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system for a sufficient period of time, not to exceed four hours on an annual basis, to undertake a screening for breast cancer.
2. The entire period of the leave of absence granted pursuant to this section shall be excused leave and shall not be charged against any other leave such public officer, employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system is otherwise entitled to.
3. The provisions of this section shall not apply to any employee of a city having a population of one million or more.

## New York State Civil Service Law §159-c. Excused leave to undertake a screening for prostate cancer.

1. Every public officer, employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system shall be entitled to absent himself and shall be deemed to have a paid leave of absence from his duties or service as such public officer, employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district, or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system for a sufficient period of time, not to exceed four hours on an annual basis, to undertake a screening for prostate cancer.
2. The entire period of the leave of absence granted pursuant to this section shall be excused leave and shall not be charged against any other leave such public officer, employee of this state, employee of any county, employee of any community college, employee of any public authority, employee of any public benefit corporation, employee of any board of cooperative educational services (BOCES), employee of any vocational education and extension board, or a school district enumerated in section one of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, employee of any municipality, employee of any school district or any employee of a participating employer in the New York state and local employees' retirement system or any employee of a participating employer in the New York state teachers' retirement system is otherwise entitled to.
3. The provisions of this section shall not apply to any employee of a city having a population of one million or more.



**Appendix D: Cancer Screening Leave Policy,  
BROOME COUNTY,  
N.Y., RESOLUTION # 2013-412 (2013)**

A copy of Broome County's law providing paid leave for colorectal cancer screening to civil service employees.

**CANCER SCREENING LEAVE POLICY\*\*\*\***

**APPROVED BY THE COUNTY LEGISLATURE- OCTOBER 17, 2013**

**Resolution # 2013-412**

**POLICY**

IT IS THE POLICY OF BROOME COUNTY TO GRANT EMPLOYEES UP TO A MAXIMUM OF FOUR (4) HOURS OF PAID LEAVE TIME, PER SCREENING, ANNUALLY FOR COLON, BREAST AND/ OR PROSTATE SCREENING.

**PROCEDURE**

EMPLOYEES TAKING ADVANTAGE OF THIS LEAVE TIME MUST INFORM THEIR SUPERVISOR AND/ OR DEPARTMENT HEAD IN ADVANCE OF THE APPOINTMENT AND SHALL PROVIDE A WRITTEN STATEMENT SIGNED BY THE EMPLOYEE'S HEALTHCARE PROVIDER INDICATING THAT THE EMPLOYEE HAS COMPLETED THE SCREENING. THIS LEAVE TIME SHOULD NOT BE CHARGED TO ANY OTHER ACCRUED LEAVE TIME BALANCES.

\*\*\*\* EARLY DETECTION IS CRITICAL TO TREATMENT, REDUCTION OF MEDICAL COSTS AND SURVIVAL FROM MANY TYPES OF CANCERS AND IN 2007, NEW YORK STATE ENACTED LEGISLATION REQUIRING EMPLOYERS TO PROVIDE EMPLOYEES PAID LEAVE TIME FOR BREAST AND PROSTATE CANCER SCREENING. BROOME COUNTY IS NOW ADDING COLON CANCER SCREENING TO THE PREVIOUSLY APPROVED SCREENINGS.

## Appendix E: Relevant Links and Resources

A list of resources and organizations that provide information and education on paid leave and wellness programs.

## Links & Resources: Paid Leave & Wellness Programs

### National Partnership for Women and Families

<http://www.nationalpartnership.org>

The National Partnership for Women and Families is a nonprofit dedicated to advancing policy to help women and families. It advocates for paid leave to help individuals meet the demands of both work and family.

### The Guide to Community Preventive Services (The Community Guide)

<http://www.thecommunityguide.org/index.html>

The Community Guide provides free resources on interventions that have been systematically reviewed to determine their effectiveness in improving community health. It includes interventions that improve preventive cancer screening rates.

### C-Change

<http://c-changetogether.org/>

C-Change brings together the public, private, and non-profit sectors to make progress in addressing cancer treatment, prevention, and access to care. Their website provides access to resources for “Making the Business Case for Prevention”, which provides resources for employers on how to promote prevention and early detection to employees through health insurance policies.

### CDC Evaluation of Workplace Health Promotion Site

<http://www.cdc.gov/workplacehealthpromotion/index.html>

The Center for Disease Control and Prevention’s (CDC) Workplace Health Promotion website provides resources for designing, implementing, and evaluating workplace health programs. It includes links to the CDC’s National Healthy Worksite Program and Work@Health Program.

### RAND Wellness Report

[http://www.rand.org/content/dam/rand/pubs/research\\_reports/RR200/RR254/RAND\\_RR254.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR254/RAND_RR254.pdf)

The RAND Corporation (rand.org) produced a research report sponsored by the U.S. Departments of Labor and Health and Human Services. It provides information on wellness program implementation, uptake, health, and costs in the U.S. The report reviewed relevant scientific and trade literature, claims data, wellness program data, case studies, and a national survey.

### Healthy Maine Streets Website

<http://www.healthymainestreets.org/>

Healthy Maine Streets is a CDC grant funded program that brings community leaders together to develop worksite wellness programs.

### Massachusetts Department of Public Health- A Model Wellness Guide

<http://www.mass.gov/eohhs/docs/eohhs/wellness-tax-credit/model-wellness-guide.pdf>

This Guide provides “best practices” for workplace wellness programs.

### The U.S. Department of Labor Wellness Program Checklist

<http://www.dol.gov/ebsa/regs/fab2008-2.html>

This checklist helps employers determine whether a worksite wellness program has to comply with federal wellness program regulations, and if so, whether it is in compliance.

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The Public Health and Tobacco Policy Center is a legal research Center within the Public Health Advocacy Institute. Our shared goal is to support and enhance a commitment to public health in individuals and institutes who shape public policy through law. We are committed to research in public health law, public health policy development; to legal technical assistance; and to collaborative work at the intersection of law and public health. Our current areas of work include tobacco control and childhood obesity and chronic disease prevention. We are housed in Northeastern University School of Law.

## What we do

### Research & Information Services

- provide the latest news on tobacco and public health law and policy through our legal and policy reports, fact sheets, quarterly newsletters, and website

### Policy Development & Technical Assistance

- respond to specific law and policy questions from the New York State Tobacco Control Program and its community coalitions and contractors, including those arising from their educational outreach to public health officials and policymakers
- work with the New York State Cancer Prevention Program to design policies to prevent cancer
- assist local governments and state legislators in their development of initiatives to reduce tobacco use
- develop model ordinances for local communities and model policies for businesses and school districts

### Education & Outreach

- participate in conferences for government employees, attorneys, and advocates regarding critical initiatives and legal developments in tobacco and public health policy
- conduct smaller workshops, trainings webinars, and presentations focused on particular policy areas
- impact the development of tobacco law through *amicus curiae* ("friend of the court") briefs in important litigation

## Find us online

[www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org)

The Center's website provides information about recent tobacco news and case law, New York tobacco-related laws, and more. Current project pages include: tobacco-free outdoor areas; tobacco product taxation; smoke-free multiunit housing; and retail environment policies. The website also provides convenient access to reports, model policies, fact sheets, and newsletters released by the Center.

<http://twitter.com/CPHTP>

<https://www.facebook.com/CPHTP>

Follow us on Twitter and Facebook for informal updates on the Center and current events.

### Requests for Assistance

The Center is funded to support the New York State Tobacco Control Program, the New York State Cancer Prevention Program and community coalitions and educators. The Center also assists local governments and other entities as part of contractor-submitted requests. If we can help with a tobacco-related legal or policy issue, please contact us.

The Center provides educational information and policy support. The Center does not represent clients or provide legal advice.



Public Health Advocacy Institute *at* Northeastern University School of Law  
360 Huntington Avenue, 117CU • Boston, MA 02115  
[tobaccopolicycenter.org](http://tobaccopolicycenter.org)  
617.373.8494