

Catherine BorgiaLegislator, 9th District

Chair, Budget & Appropriations Committee

**Committee Assignments:**
Appointments
Environment & Health
Intergovernmental Services
Labor & Housing
Legislation
Planning, Economic Development & Energy
Social Services

To: Ben Boykin, Chairman of the Board of Legislators
Sunday Vanderberg, Clerk of the Board of Legislators

From: Catherine Borgia, 9th District
Jose Alvarado, 17th District

Date: April 21, 2021

Re: Earned Sick Leave for Domestic Workers Legislation

Please refer the attached Local Law amending Chapter 585 of the Laws of Westchester County regarding earned sick leave for domestic workers, to the appropriate committees on the April 26, 2021 Westchester County Board of Legislators agenda.

As you are aware, this Legislature passed the Earned Sick Leave Law in 2018, ensuring paid sick time to tens of thousands of workers here in Westchester County. In 2020, New York State followed our lead and passed Earned Sick Leave statewide. While the state law preempts our County Law, the State Law does not provide protections for domestic workers, while Westchester's law did.

The attached Local Law will reaffirm Earned Sick Leave protections for Domestic Workers in Westchester County.

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending Chapter 585 of the Laws of Westchester County regarding earned sick leave for domestic workers” and recommends its adoption.

Your Committee is aware that the Westchester County Board of Legislators passed Chapter 585 of the Laws of Westchester County (“Earned Sick Leave Law”) on October 1, 2018 and went into effect on April 10, 2019. The Earned Sick Leave Law provides employees, including domestic workers, with a maximum of 40 hours of earned sick leave per year. It also set forth the parameters when such earned sick leave may be used and protects employees from adverse employment action for appropriately exercising their right to use their earned sick time. Whether or not the earned sick leave is paid is determined by the number of employees employed by the employer.

Your Committee is informed that the State subsequently enacted its own earned sick leave law, which combined paid and unpaid sick leave and safe leave. *See* Part J of Chapter 56 of the Laws of New York, 2020. The State law allows municipalities with previously enacted sick leave laws to maintain those local laws. N.Y. LAB § 196-b(12). However, the Earned Sick Leave Law contains a “reverse preemption” clause which provides that the law “shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law.” LWC §§ 585.15. The Earned Sick Leave Law also contains a “severability” clause which provides that if “any provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.” LWC §§ 585.16.

Your Committee is advised that in comparison to the Earned Sick Leave Law, most of the State law incorporates the same or substantially similar provisions as the Earned Sick Leave Law, or provides greater protections; therefore the Earned Sick Leave Law is void pursuant to the reverse preemption provision. However, the provisions in the Earned Sick Leave Law related to domestic workers provide greater protections than the State law; therefore such provisions are not void pursuant to the reverse preemption provision. The Earned Sick Leave Law provides that domestic workers, regardless of the number of domestic workers employed by their employer, are entitled to up to forty hours of paid sick time per year.

Your Committee is further advised that the New York State Department of Labor has also determined that the provisions related to domestic workers in the Earned Sick Leave Law remain in effect. https://www.ny.gov/sites/ny.gov/files/atoms/files/PSL_FactSheet_DomesticWorkers.pdf. As such, this Local Law amends the Earned Sick Leave Law to remove preempted provisions and make clear that the domestic worker provisions remain in effect and protect domestic workers in Westchester County.

Additionally, this Local Law amends Section 585.06(1)(c) to clarify that the subsection provided permits employers to send a domestic worker home from work, and charge that worker's sick leave, where there appears to be a medical concern that requires immediate attention.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2021
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ – 2021

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2021, entitled “A LOCAL LAW amending Chapter 585 of the Laws of Westchester County regarding earned sick leave for domestic workers.” The public hearing will be held at __.m. on the _____ day of _____, 2021 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. -2021

A LOCAL LAW amending Chapter 585 of the Laws of Westchester County regarding earned sick leave for domestic workers.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 585 of the Laws of Westchester County is hereby amended to read as follows:

Chapter 585 - EARNED SICK LEAVE LAW FOR DOMESTIC WORKERS

Sec. 585.01. - Short title.

This chapter shall be known as and may be cited as the "Earned Sick Leave Law for Domestic Workers."

Sec. 585.02. - Definitions.

For purposes of this chapter:

1. "Calendar year" shall mean from January 1 to December 31 in any given year.
2. "Child" shall mean, regardless of age, a biological, adopted, foster child, legal ward or a person to whom the [employee]domestic worker stands in loco parentis or to whom the [employee]domestic worker stood in loco parentis when that person was a minor.
3. "Domestic partner" shall mean any "domestic partner" as defined under New York State Workers' Compensation Law section 4(1).
4. "Domestic worker" shall mean any domestic worker as defined in section 2(16) of the New York State Labor Law who is employed for hire within the Westchester County for more than 80 hours in a calendar year on a full-time or part-time basis.
5. "Earned sick time" means time that is accrued in accordance with section 585.03 or calculated in accordance with section 585.04 to be utilized for the purposes provided in section 585.06 of this chapter.
- [6. "Employee" shall mean any person employed for hire by an employer in any employment within Westchester County for more than 80 hours in a calendar year who performs work on a full-time or part-time basis, including work performed in subsidized private sector and not-for-profit employment programs, but not including:
 - a. Work performed as a participant in a work experience program established by a social services district;

- b. Work performed pursuant to work study programs under 42 U.S.C. Section 2753;
 - c. Work performed by employees compensated by or through qualified scholarships as defined in 26 U.S.C. Section 117.]
- [7]6. "Employer" shall mean any "employer" as defined in Section 190(3) of New York State Labor Law[, except that an employer includes Westchester County government for its employees that are not subject to a collective bargaining agreement].
- [8]7. "Family member" means a[n employee's] domestic worker's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of a[n employee's] domestic worker's spouse, domestic partner or household member. For purposes of this subdivision, "household member" shall mean (i) persons related by consanguinity or affinity; (ii) persons legally married to or in a domestic partnership with one another; (iii) persons formerly married to or in a domestic partnership with one another regardless of whether they still reside in the same household; (iv) persons who have a child in common, regardless of whether such persons have been married or domestic partners or have lived together at any time; and (v) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.
- [9]8. "Health care professional" means any person licensed under federal or state law to provide medical or emergency services, including but not limited to doctors, nurses, midwives and emergency room personnel.
- [10]9. "Parent" shall mean a biological, foster, step- or adoptive parent, a legal guardian of a[n employee] domestic worker or a person who stood in loco parentis when the [employee] domestic worker was a minor.
- [11]10. "Personal time" shall mean leave with pay for personal business including, but not limited to, use for religious observance, attendance at funerals, necessary absences due to extraordinary weather conditions, attendance at conventions other than on required business, personal or family business appointments and similar reasons.
- [12]11. Persons who are "in loco parentis" shall mean those with day-to-day responsibilities to care for and financially support a child, or, in the case of a[n employee] domestic worker, who had such responsibility for the [employee] domestic worker when the [employee] domestic worker was a child. A biological or legal relationship is not necessary.
- [13]12. "Retaliatory personnel action" means denial of any right guaranteed under this chapter or any threat, discharge, suspension, demotion, reduction of hours, reporting or threatening to report a[n employee's] domestic worker's suspected citizenship or immigration status, or the suspected citizenship or immigration status of a family member of the [employee]domestic worker to a federal, state or local agency, or any other adverse action against a[n employee]domestic worker for the exercise of any right guaranteed herein including any sanctions against a[n employee] domestic worker who is the recipient of public benefits for rights

guaranteed under this chapter. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this chapter.

[14]13. "Year", other than "calendar year" means a regular and consecutive twelve-month period as determined by the employer.

Sec. 585.03. - Accrual of earned sick time for domestic workers.

1. At the commencement of employment or 90 days after this law goes into effect, whichever is later, all employees, except for domestic workers, shall accrue a minimum of one hour of sick time for every 30 hours worked.
2. Employees of an employer with five or more employees shall be entitled to earn and use up to 40 hours of paid sick time in a year, unless the employer selects a higher limit. Paid sick time shall be compensated at the same hourly rate as the employee normally earns during hours worked, but in no case shall this hourly amount be less than that provided under Section 652(1) of the Labor Law of New York. Employees of an employer with fewer than five employees shall be entitled to earn and use up to 40 hours of unpaid sick time in a year. In determining the number of employees performing work for an employer pursuant to this subdivision, 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 per week fluctuates, the number of employees for the current calendar year may be based upon the average number of employees who worked per week during the preceding calendar year.]
- [3.] Domestic workers shall accrue a minimum of one hour of sick time for every seven days worked, which shall be in addition to the one day of rest provided for in New York State Labor Law Section 161(1). All domestic workers employed by any employer, regardless of the number of domestic workers employed, shall be entitled to earn and use up to a maximum of 40 hours of earned paid sick time in a year, unless the employer selects a higher limit. Paid sick time shall be compensated at the same hourly rate as the domestic worker normally earns during hours worked, but in no case shall this hourly amount be less than that provided under Section 652(1) of the Labor Law of New York.
- [4. Forty hours is the maximum amount of sick leave to be accrued in a year.]

Sec. 585.04. - Employer's options; collective bargaining agreements.

1. Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of earned sick time at a faster rate than provided herein; or from providing more sick time than provided herein.
2. In lieu of calculating the accrual of earned sick time, an employer shall have the option to provide a[n employee] domestic worker with sick time and personal time which if combined equals 40 hours or more per calendar year, or the year as determined by the employer (i.e., anniversary date). Such an employer shall be in compliance with this law, provided that the [employee]domestic worker is permitted to take time as needed for

sick time, with no advance notice necessary and no restrictions are placed on use of earned sick time other than those contained in this chapter.

3. 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 earned and/or paid sick time to a[n employee] domestic worker than required herein. [Nothing in this chapter shall be construed as diminishing the rights of public employees regarding earned and/or paid sick time or use of earned and/or paid sick time as provided in the laws of New York State or Westchester County pertaining to public employees.]

The provisions of this chapter shall not apply to any [employee]domestic worker covered by a valid collective bargaining agreement if:

- (a) Such provisions are expressly waived in such collective bargaining agreement; and
- (b) Such agreement provides for a comparable benefit for the [employees]domestic workers 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.

Sec. 585.05. - Protections for earned sick leave.

1. Earned sick time that has not been utilized can be carried over to the following year, provided that the maximum amount of sick leave for any given year remains at 40 hours.
2. If a[n employee, including] domestic worker[s,] is transferred to a separate division, entity or location within Westchester County, but remains employed by the same employer, the [employee] domestic worker is entitled to all unused earned sick time accrued at the prior division, entity or location provided that said prior division, entity or location is also located in Westchester County.
3. When there is a separation from employment and the [employee] domestic worker is rehired within nine months of separation by the same employer, previously accrued earned sick time that had not been used shall be reinstated.
4. When one employer is succeeded by another employer, all domestic workers [employees of] employed by the original employer who remain employed by the successor employer are entitled to all the unused earned sick time they accrued when employed by the original employer.

Sec. 585.06. - Use of earned sick time.

1. All earned sick time may be used for:
 - a. A[n employee] domestic worker's mental or physical illness, injury or health condition; a[n employee] domestic worker's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; a[n employee] domestic worker's need for preventive medical care;

- b. The care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; and care of a family member who needs preventive medical care;
 - c. [Any employer who is willing to pay for the use of an employee's earned sick time, may authorize an employee to utilize sick time if the] Sending a domestic worker home from employment where an employer reasonably determines that [an employee] the domestic worker's mental or physical illness, injury or health condition or a [n employee] domestic worker's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition requires immediate attention;
 - d. The care for a [n employee] domestic worker or family member when it has been determined by the public health authorities having jurisdiction that the [employee] domestic worker's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease where or not the [employee] domestic worker or family member has actually contracted the communicable disease;
 - e. The closure of the [employee] domestic worker's place of business by order of a public official due to a public health emergency;
 - f. The closure of a day care or elementary or secondary school attended by a [n employee] domestic worker's child where such closure was due to a public health emergency.
2. A [n employee] domestic worker's ability to use earned sick time may be delayed until the [employee] domestic worker has worked for the employer for 90 days.
 3. In the event that a [n employee] domestic worker only needs to use a portion of a day of earned sick time, a [n employee] domestic worker may use a minimum of four hours and, if more time is needed, then the smallest increment that the employer's payroll system uses to account for absence or use of other time.
 4. At its discretion, an employer may loan earned sick time to a [n employee] domestic worker in advance of accrual by such [employee] domestic worker.
 5. Nothing in this section shall be construed as requiring an employer to provide financial or other reimbursement to a [n employee] domestic worker upon the [employee] domestic worker's termination, resignation, retirement or other separation from employment for unused accrued earned sick time.

Sec. 585.07. - Procedures relating to the request to use earned sick time.

1. Earned sick time shall be provided upon the request of a [n employee] domestic worker. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.
2. When the use of earned sick time is foreseeable, the [employee] domestic worker shall make a good faith effort to provide notice to the employer in advance and shall make a

reasonable effort to schedule the use of earned sick time in a manner that does not unduly disrupt the operations of the employer.

3. An employer that requires notice of the need to use earned sick time shall provide a written policy that contains the procedures for the [employee]domestic worker to provide notice. An employer that has not provided a copy of its written policy to the [employee]domestic worker shall not deny earned sick time to the [employee]domestic worker based on noncompliance with such policy.
4. An employer may not require, as a condition of a[n employee] domestic worker's use of earned sick time, that the [employee]domestic worker find another [employee]domestic worker to work during the time of the [employee]domestic worker's absence.
5. For earned sick time of more than three consecutive work days, an employer may require the [employee]domestic worker to provide reasonable documentation that the earned sick time has been used for a purpose covered by section 585.06 above. Documentation provided by the [employee]domestic worker and signed by a health care professional indicating that earned sick time is necessary shall be considered reasonable documentation for purposes of this section. The employer cannot require a doctor to provide a note containing information in violation of HIPAA.

Sec. 585.08. - Exercise of rights protected; retaliatory personnel actions prohibited.

1. It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, the right to use earned sick leave.
2. It shall be unlawful for an employer to include used earned sick time as an absence that may lead to or result in discipline, discharge, demotion, or suspension.
3. An employer shall not take retaliatory personnel action or discriminate against a[n employee] domestic worker because the [employee]domestic worker has requested to use or has used earned sick time.
4. An employer shall not take retaliatory personnel action or discriminate against a[n employee] domestic worker that has filed a complaint regarding an employer's alleged violation of this Earned Sick Leave Law.
5. An employer shall not take retaliatory personnel action or discriminate against a[n employee] domestic worker that has informed another [employee]domestic worker of his or her rights under the Earned Sick Leave Law.
6. There shall be a rebuttable presumption of unlawful retaliatory personnel action whenever an employer takes adverse action against a[n employee] domestic worker within 90 days of the filing of a complaint regarding an employer's alleged violation of this Earned Sick Leave Law.

Sec. 585.09. - Notice and posting.

1. At the commencement of employment or within 90 days of the effective date of this law, whichever is later, all employers shall give [employee]domestic workers a copy of the Earned Sick Leave Law and written notice of how the law applies to that [employee]domestic worker.

2. Employers shall display a copy of the Earned Sick Leave Law and a poster in English, Spanish and any other language deemed appropriate by the County of Westchester, in a conspicuous location accessible to the [employee]domestic worker.
3. An employer who willfully violates the notice and posting requirements of this section shall be subject to a civil fine in an amount not to exceed \$500.00 for each separate offense.

Sec. 585.10. - Employer records.

1. Employers shall retain records clearly documenting the hours worked by [employee]domestic workers and earned sick time accrued and taken by [employee]domestic workers, for a period of three years.
2. There shall be a rebuttable presumption of a violation of the Earned Sick Leave Law for an employer's failure to retain records in accordance with subdivision 1.

Sec. 585.11. - Enforcement, civil action and penalties.

1. The [Department]Office of Weights and Measures - Consumer Protection (hereinafter referred to in this section as the "[department]Office") shall establish a process to receive complaints from a person alleged to have been aggrieved by an employer's non-compliance with this chapter. Such complaint must be filed within one year after the occurrence of the alleged violation. Once a complaint is received, the [department]Office shall investigate the complaint, and if the [department]Office finds probable cause to support that a violation has occurred, it shall attempt to facilitate a resolution.
2. If there has been no resolution of the matter in accordance with subsection 1[.] above, then the [department]Office shall issue a summons to the employer in the form of an appearance ticket that shall give notice of alleged violation and set forth the time and place of the hearing on such complaints, which shall not be less than eight days following service of the summons. Such hearing shall be held before a hearing officer who shall hear testimony and examine exhibits as may be offered and received in evidence, but shall not be required to follow strict rules of evidence. The hearing officer shall have the power to:
 - a. Dismiss the complaint if not proven by a preponderance of the evidence;
 - b. Adjust the matter upon consent; or
 - c. Determine a violation has occurred and impose any of the following penalties and any other penalties as may be provided for in this chapter:
 - i. Require the employer to pay the [employee]domestic worker three times the wages that should have been paid under this chapter or \$250.00, whichever is greater for each instance of sick time taken by an [employee]domestic worker but unlawfully not compensated by the employer;
 - ii. Require the employer to pay the [employee]domestic worker \$500.00 for each instance of sick time requested by a[n employee]domestic worker but unlawfully denied by the employer and not taken by the [employee]domestic

worker or unlawfully conditioned upon searching for or finding another [employee]domestic worker to work;

- iii. Grant such additional relief, as it deems appropriate, the full amount of any unpaid earned sick time plus any actual damages suffered as the result of the employer's violation of the Earned Sick Leave Law, reasonable attorney's fees, the cost of the administrative hearing, and other monetary or equitable relief as may be appropriate, without limitation, reinstatement to employment and back pay.

The determination of the hearing officer shall be served upon the parties. The aggrieved party may appeal said determination to a court of competent jurisdiction by the commencement of a proceeding within 30 days after service of said order upon the aggrieved party. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in this subdivision.

3. In lieu of the procedures set forth in subsections 1. and 2. above, any person who claims to have been aggrieved by a violation of this chapter may commence a civil action in [the appropriate]a court of appropriate jurisdiction not later than one year after the occurrence of an alleged violation. If the court finds an unlawful violation has occurred, the court may impose the penalties set forth in subsection 2 above.

Sec. 585.12. - Confidentiality and nondisclosure.

1. Health information about a[n employee] domestic worker or family member obtained solely for the purposes of utilizing sick time shall be treated as confidential and shall not be disclosed except with the written permission of the affected [employee]domestic worker, unless such disclosure is otherwise required by law.
2. Any health or safety information possessed by an employer regarding a[n employee] domestic worker or [employee]domestic worker's family member must be maintained on a separate form and in a separate file from other personnel information.

Sec. 585.13. - Other legal requirements.

This chapter provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, or policy that provides for greater accrual or use by [employee]domestic workers of earned sick time or that extends other protections to [employee]domestic workers. In addition, nothing in this chapter shall be construed to prevent, interfere or conflict with any rights of an [employee]domestic worker under the New York Disability Benefits Law and Paid Family Leave Benefits Law, N.Y. Workers' Comp. Law § 200 et seq.

Sec. 585.14. - Public education and outreach.

The Westchester County Human Rights Commission shall develop and implement a multilingual outreach program to inform [employees]domestic workers, parents and persons who are under the care of a health care provider about the availability of earned sick time under this chapter. This program shall include the distribution of notices and other written materials in English and Spanish and any language deemed appropriate by the Westchester

County Human Rights Commission to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other health care providers in Westchester County.

Sec. 585.15. - Reverse preemption.

This local law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The Board of Legislators may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Sec. 585.16. - Severability.

If any provision of this chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

Section 2. This local law shall take effect immediately.