

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.