

Sick pay law and musicians: a Local 802 victory!

PAID SICK DAYS will be a reality for many New Yorkers, thanks to a new city law. On May 8, by a veto-proof margin of 45 to 3, the City Council voted to enact the Earned Sick Time Act. As of next April 1, the law requires employers with more than 20 workers to provide up to five contiguous paid sick days to those working 120 days or more. The law was absolutely needed because half of New York City workers do not receive any paid sick days – that’s 1.6 million people. The loss of productivity sustained by businesses due to worker illness, exacerbated by employees being forced to work sick, is staggering. The closest law we have on the books right now is the Family Medical Leave Act, a federal statute that grants leave to employees who suffer from a serious medical condition (or who have to care for a family member who suffers). But that leave is unpaid and it’s only provided to employees who work more than 1,250 hours a year in a company that employs more than 50 people. Many workers in New York City do not qualify.

This new sick pay law is extremely good news for musicians and other performing artists, who, as a result of the



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union’s lobbying efforts, were specifically included within the scope of the law. The first draft of the law didn’t explicitly define musicians as employees, which was quite alarming to us. Less than two weeks before City Council was scheduled to vote on the law, Local 802 went into

action. Using all of our contacts, we explored the bill’s chief sponsor – Council Member Gale A. Brewer – and her colleagues to make sure that musicians and performing artists were specifically included within the scope of the term “employee” as defined in the statute.

As a result of this last-minute effort, the Council report now states:

The bill is intended to cover all employees in the State of New York... For instance, musicians and other performers who qualify for unemployment insurance coverage pursuant to the Unemployment Compensation Law or covered by the New York Workers Compensation Law are intended to be employees for purposes of this local law.

Without the addition of this statement in the law’s legislative history, employers would undoubtedly argue that musicians were not employees entitled to sick leave benefits, but were instead unprotected independent contractors. This, in fact, was the case for many years with respect to the New York State Unemployment Compensation Act and New York State Workers Compensation

Law, until Local 802 and other entertainment unions lobbied the New York State Legislature to ensure that musicians and other performing artists were covered by the law.

Before those laws were amended, musicians were routinely denied unemployment and workers compensation benefits. We found that former Local 802 President John Glasel had written letters in 1986 and 1989 to Gov. Mario Cuomo imploring him to sign the amendments into law. It is clear that without Local 802’s efforts 30 years ago to amend those state laws, Local 802 would not have been able to achieve our latest milestone with the sick pay law.

While the sick pay law does not become effective until early 2014, it clearly will benefit many employees now, since employers with union agreements that provide comparable sick leave will not be subject to the harsh remedies that will be imposed on employers who violate the statute. This exemption will undoubtedly provide an incentive to employers to enter into collective bargaining agreements.

So how will the sick pay law work for musicians, exactly? See the article on the next page for details.

“Musicians work as hard as any worker in any industry, and they need and deserve paid sick leave. Culture and tourism are core economic engines for our city, and *when our professional musicians and their families are healthy, our economy is healthier too.*

I am thrilled to have taken the steps to make sure that musicians and other performing artists were included in the Paid Sick Leave legislation.”

– Council Speaker Christine Quinn



“Approximately one million New Yorkers will now have the fundamental right to a paid day off when they or a family member falls ill, and no worker will be fired if they must stay home *including professional musicians who make New York City one of the world’s music and entertainment capitals.* This is a tremendous accomplishment of which all fair-minded New Yorkers can be proud...”

– Council Member Gale A. Brewer





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The new law means that even part-time musicians may earn paid sick time.

How will the sick pay law work for musicians?

UNDER THE NEW SICK PAY LAW, workers will be entitled to up to five paid sick days a year, with the right to carry over unused earned sick days. Sick leave will accrue at the rate of one hour per every 30 hours worked, so even part-time employees will be entitled to sick leave.

Accrual commences upon employment, but sick leave cannot be utilized until 120 days after employment began.

Unused accrued sick days may be carried over year to year. Employees who do not qualify for paid coverage are still entitled to 40 hours of unpaid sick leave at the same accrual rates.

How could this help you as a musician? Let's say you play music for a restaurant every Friday night from 8 p.m. to midnight. That's four hours a week. After a year of working there

(208 hours total), you would be entitled to almost seven hours of paid sick leave. Now if you put that together with all of the other freelance work you do, it could really add up. (The maximum under the law is 40 hours of paid sick leave per year.)

If you already enjoy sick pay under an existing union contract (like the Local 802 Broadway agreement), the new sick pay law won't give you new benefits; the law exempts collective bargaining agreements that contain sick pay provisions. The new law also only covers employees who work in the city more than 80 hours in a calendar year.

Finally, the law will be suspended in the event of another economic downturn. The New York City Department of Consumer Affairs will oversee enforcement of the law.

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