

PAID SICK LEAVE NOW TO BE MANDATORY THROUGHOUT THE STATE OF NEW JERSEY

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Joining a growing number of states, New Jersey will soon require most employers to provide their employees with paid sick leave. A number of New Jersey towns and cities already require such leave, but new legislation, which New Jersey Governor Phil Murphy just signed, will override such local laws and go into effect October 29, 2018.

All employers (except for certain public employers) with employees in the State of New Jersey will be obligated to provide earned sick leave to eligible employees. The law excludes from eligibility employees in the construction industry who work under a collective bargaining agreement, certain employees covered by a collective bargaining agreement in effect as of October 29, 2018 until the agreement's expiration, certain per diem health care employees, and public employees provided sick leave with full pay under any other state law.

ACCRUAL

Under the new law, eligible employees accrue one hour of earned sick leave for every 30 hours they work. Employers may cap the earned sick leave hours an employee may accrue or use in, or carry over from, one benefit year to the next at 40. Employees hired before October 29, 2018, start to accrue earned sick leave on that date (unless they already accrued earned sick leave beforehand, for example, under a local law), and employees hired after October 29, 2018, begin to accrue earned sick leave on the date they are hired. Employees may use any earned sick leave starting 120 calendar days after the date of hire.

Employers may satisfy their obligations under the law by providing employees with other forms of paid time off (e.g., PTO days). To do so, employers must permit employees to use such time off for the same purposes and in the same manner that they may use earned sick leave under the law, and to accrue earned sick leave benefits at a rate equal to or greater than the rate specified under the new law.

The law includes special provisions that allow employers to buy out earned but unused sick leave at the end of the benefit year. Absent a policy or collective bargaining agreement to the contrary, employees need not be paid for any earned but unused sick leave when their employment ends.

USE

Earned sick leave may be used for any of the following:

- To diagnose, care, treat, or recover from the employee's mental or physical illness, injury, or other adverse health condition, or seek preventive medical care for the employee;

- To help or care for an employee's family member during diagnosis, care, or treatment of, or recovery from the family member's mental or physical illness, injury, or other adverse health condition, or during the family member's preventive medical care;
- Absence necessitated by the employee or his or her family member being a victim of domestic or sexual violence in order to seek medical attention, obtain services or counseling, relocate, or prepare for or participate in legal proceedings related to domestic or sexual violence;
- Time when the employee cannot work due to closure of the employee's workplace or the school or place of care of the employee's child by order of a public official because of an epidemic or other public health emergency, or due to a public health authority's determination that the employee or member of his or her family in need of care would jeopardize the health of others; or
- With respect to the employee's child, time the employee needs to attend a school-related conference, meeting, function, or other event requested or required by a school administrator, teacher, or certain other professionals, or to attend a meeting about child care related to the child's health conditions or disability.

Where the employee's need to use earned sick leave is foreseeable, employers can require advance notice of leave up to seven days before it is to begin. Where the need for leave is not foreseeable, employers can only require notice as soon as practicable, if they have notified employees of this requirement. Employers may require employees to provide certain reasonable documentation when they take leave for one of the above reasons and the leave is for three or more consecutive days. The law specifies what employers must treat as reasonable documentation depending on the circumstances underlying the leave.

RECORDKEEPING AND NOTICES

Employers must keep records for at least five years showing the hours that employees work and take as earned sick leave. Failure to maintain such records results in a presumption that the employer did not comply with its obligations to provide earned sick leave, unless clear and convincing evidence exists otherwise.

The Commissioner of Labor and Workforce Development is to issue a form that employers must conspicuously post in the workplace to notify employees of their rights. Employers must also give employees a copy of this form within 30 days of its issuance, when employees are hired (after its issuance), and whenever an employee asks. The official notice will be made available in English, Spanish, and other languages the Commissioner decides are widely spoken in the state. Where an official version is available, employers must use the notice written in the first language of a majority of their workforce.

NONDISCRIMINATION AND NONRETALIATION

Employers are prohibited from discriminating or retaliating against employees for, among other things, using or seeking to use earned sick leave, filing a complaint alleging violations of their sick leave rights, or informing others of such rights. Additionally, employers may not treat earned sick leave as an absence giving rise to discipline or any adverse action.

DAMAGES

Employers' violations of this sick leave law are treated as wage payment violations, for which penalties, damages, and other remedies are available against the employer. Moreover, employees who prevail in a civil action for violations of their sick leave rights are entitled to liquidated damages and may also be awarded costs and attorneys' fees.

Employers should assess how this new law may affect and interact with their current practices and policies, including any existing policies as to time off, and plan accordingly for compliance. In addition, employers should keep an eye out for the Commissioner's issuance of the official forms described above and ensure they fulfill the law's notice requirements.

KEY CONTACTS



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