



On October 29, 2018, New Jersey became the tenth state to enact a paid sick leave law and in doing so, the legislature stated its intent that New Jersey's law be the broadest and strongest of its kind in the nation. Under the Act, almost all employers are required to provide paid sick leave to all of their employees. Given the broad and significant impact of the Act, it is crucial that all New Jersey employers take appropriate measures to ensure their compliance. It is important to know that the Act establishes the minimum requirements now applicable to employers by law. If an employer's written policy or applicable collective bargaining agreement provides for more expansive benefits or protections for an employee, then the more expansive or protective provisions of the employer's written policy or collective bargaining agreement continue to apply.

Who is Covered by the Act?

Unlike many other laws regulating the employer-employee relationship, this law applies to all employees working in New Jersey regardless of the size of the employer or the employee's job function. The only exceptions to the law are construction workers employed under a collective bargaining agreement, per diem healthcare workers and public employees.

It should be noted that the law applies exclusively to employees working in New Jersey and is not applicable to New Jersey residents who work in other states. At this time, none of New Jersey's neighboring states (Pennsylvania, New York and Delaware) have any paid sick leave laws.

Calculating Leave Under the Act.

Under the law, each employee accrues paid sick leave in one-hour increments for every 30 hours worked up to a maximum of 40 hours annually. Alternatively, employers may front-load their employees' Sick Leave by making all 40 hours available to them on the first day of each year. Whether an employer utilizes the accrual or front-loaded approach impacts the employer's options when it comes to unused Sick Time.

Employers may use the calendar year or may designate a different twelve-month period as their "Benefit Year" for compliance purposes. Absent a more lenient official company policy, employees are not eligible to take paid sick leave until the 120th calendar day following the commencement of the employee's employment. Employees commencing employment during a Benefit Year are entitled to a prorated maximum or the remainder of the first Benefit Year.

What May "Sick Leave" be Used For?

Notwithstanding its name, the law permits employees to use their earned "sick" time for a multitude of reasons including for the medical needs of the employee or the employee's family members; treatment or counseling relating to the employee or their family member being a victim of domestic violence; closure of the employee's children's school or child care due to a public health emergency; or due to school conferences or function for the employee's child.

When the employee's need to use earned sick time is deemed to be "foreseeable" an employer may require advanced notice. Additionally, employers can prohibit their employees from using earned sick time on specific dates. On designated prohibited dates employers can require reasonable documentation such as a doctor's note for an employee's earned sick time.

Employers are permitted to require reasonable documentation if an employee uses three or more consecutive days of earned sick leave. What constitutes as reasonable documentation varies based on the circumstances of the type of leave being taken. For example, if the sick leave is used for an employee's sickness then a document signed by a doctor would be considered to be reasonable documentation.

In lieu of using paid sick leave, an employee can make up hours missed during the same or next pay period but an employer cannot require the

employee to do so. Furthermore, the employer may not require, as a condition of using sick leave, that the employee arrange for another employee to cover his or her shift being missed under the sick leave law. However, for staffing and planning purposes, an employer can require an employee to use however many hours such employee was scheduled to work a particular shift – for example if the employee needs 2 hours for a doctor appointment and the employer scheduled someone else to work said employee's entire 8 hour shift, then the employer is not required to permit the employee to come back to the workplace for the balance of his or her shift and can require that the employee use 8 hours of sick leave.

Unused Sick Leave.

If an employee does not use all of his or her accrued sick leave during a Benefit Year, he or she can carry over a maximum of 40 hours of unused sick leave into the following Benefit Year.

Alternatively, an employer may offer to purchase an employee's unused sick leave and that the employee must choose whether to accept such offer within 10 calendar days. An employee may accept such proposal in whole, in part (by electing to be paid for 50% of the unused sick leave) or not at all. If the employee accepts the employer's offer to purchase unused sick leave, the employer must pay the employee for such unused sick leave prior to the last day of the corresponding Benefit Year.

It is important to note that employers are not required to provide more than 40 hours of sick leave during any Benefit Year. Consequently, the rollover provisions appear to only apply to employees who work less than 1,200 hours during a Benefit Year. Along the same line, an employer may not switch from the front-loaded method to the accrual method following any Benefit Year in which the employer purchased unused sick leave (leaving an existing employee who had not used all of his or her sick leave in the prior Benefit Year without any sick leave on the first day of the next Benefit Year).

Employers are not required to pay employees unused earned sick leave upon termination of employment.

Administrative Obligations & Penalties For Violations.

New Jersey employers must post a notice of employee rights in a conspicuous place accessible to all employees in each of the employer's workplaces. The notice can be located at:

https://www.state.nj.us/labor/forms_pdfs/mw565sickleaveposter.pdf.

Additionally, employers must document and record their employees' hours worked and earned sick leave for a period of five years. Any employer that fails to maintain such records, absent clear and convincing evidence to the contrary, will be deemed to have failed to provide their employees with sick leave and will be subject to liability, fines and penalties.

Employers are prohibited from taking retaliatory personnel action against an employee that requests or uses their earned sick time and there is a rebuttable presumption of an unlawful retaliatory action whenever an employer takes an adverse action against an employee within 90 days of that employee using their earned sick time, informing any person of their rights under the Act, or filing a complaint against the employer for violation of the Act. The rebuttable presumption can be overcome only by clear and convincing evidence.

Any employer found to violate the Act will be subjected to penalties provided under New Jersey's wage laws and criminal code for failing to pay wages. Furthermore, employees can sue their employers for violation of the Act and recover actual damages and liquidated damages.

Given these severe consequences all New Jersey employers should take the appropriate measures to ensure that they are in compliance with the New Jersey Paid Sick Leave Act.