

New Jersey Passes Paid Sick Leave Bill!

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On April 12, 2018, New Jersey Senate followed the assembly and passed the New Jersey Paid Sick Leave Act (Act). Governor Murphy has pledged to sign the Act, which expressly preempts the municipal paid sick leave ordinances that have been passed in 13 cities and towns. The Act will take effect 180 days after the governor signs it.

Provisions of the Act

Amount of Leave:

During a twelve (12) month period, an employee may accrue up to 40 hours of paid sick leave at a rate of one hour for every 30 hours worked. Alternatively, at the beginning of the twelve (12) month period, a business may simply provide 40 hours of paid sick time or utilize a paid-time-off (PTO) policy. An employer does not have to permit the accrual of more than 40 hours of paid sick leave in the twelve (12) month period. Any PTO policy must provide equal or greater benefits and accrue benefits at an equal or greater rate than the benefits provided under the Act.

Covered and Excluded Employees:

Most New Jersey employees are covered by the Act. Per diem healthcare employees, construction workers employed pursuant to a collective bargaining agreement, and public employees who already have sick leave benefits are expressly excluded from the definition of “employee” under the Act.

Covered Employers:

All businesses.

Reasons to take Leave under the Act:

- Diagnosis, care, treatment of, or recovery from, a mental or physical illness, injury or other adverse health conditions, or for preventative medical care of the employee;
- Caring for a family member during diagnosis, care, treatment of, or recovery from, a mental or physical illness, injury or other adverse health conditions, or for preventative medical care of the employee's family member;
- Absence(s) necessary due to the employee or employee's family member being a victim of domestic or sexual violence, *if the earned sick leave is used for*:
 - medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence
 - services from a designated domestic violence agency or other victim services organization;
 - psychological or other counseling
 - relocation
 - other legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic violence or sexual violence
- Time needed after the closure of the employee's workplace or the school/place of care of the employee's child by order of a public official or other public health emergency, or if a public health authority issues a determination that the presence of the employee or their family member would jeopardize the health of others;

- Attending a school-related function of the employee's child requested or required by the school responsible for the child's education, or attending a meeting concerning the care provided to the child in connection with the child's health conditions or disability;

(Please note, the definition of "family member" includes any individual "whose close association with the employee is the equivalent of a family relationship."). The amount of leave that is utilized must be documented. This documentation must be maintained for five (5) years.

Employee Notice and Documentation:

Under the Act, employers may require advance notice of foreseeable absences, but not more than seven (7) days. Employers can also prohibit the use of "foreseeable" paid sick leave benefits on certain dates, as well as require documentation if unforeseeable sick leave is used on those dates. If an employee is absent for at least three consecutive days, the business may request documentation to confirm the employee used the sick leave benefits for a purpose permitted under the Act.

Carryover:

An employee may carry over, up to forty (40) hours of accrued, but unused paid sick leave benefits. The Act also does not require an employer to pay out an employee's earned, but unused sick leave upon separation from employment, unless there is a policy to the contrary.

Notification:

Businesses must post a notification in the workplace regarding paid sick leave and provide each individual employee a copy of the notification within 30 days after issue by the Department of Labor. Notice is thereafter provided at the time of hiring or upon request by an employee.

Enforcement:

The Act provides for a private right of action that includes, among other remedies, liquidated damages in an amount equal to twice the actual damages sustained by the employee filing the claim.

No Retaliation:

Like most employment laws, the Act contains an anti-retaliation provision that sets forth a "rebuttable presumption" of unlawful retaliation if adverse action is taken against an employee within 90 days of specified protected activity (filing a complaint, cooperating in an investigation, informing others of their rights under the Act).

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