

New Jersey: 10th State to Require Paid Sick Leave

On May 2, Governor Phil Murphy signed the New Jersey Paid Sick Leave Act into law. When the new law goes into effect on October 29, it will preempt local paid sick leave ordinances that currently exist in 13 New Jersey municipalities and will require employers throughout the state to annually provide up to 40 hours of paid sick leave to their employees. New Jersey employers should review their leave management strategies, and update their practices, policies, and handbooks to ensure compliance with the new statewide requirements.

Background

In 2012, Connecticut became the first state to require employers to provide paid sick leave to “service workers,” including those with such diverse occupations as nurses and medical assistants, data processors, restaurant and food service workers, and security guards. (See our [June 29, 2011](#) *For Your Information*.) Since then, eight other states — Arizona, California, Maryland, Massachusetts, Oregon, Rhode Island, Vermont, and Washington — have enacted statewide paid sick leave laws. (See, for example, our [October 5, 2017](#) *For Your Information*.)

Paid sick leave ordinances have also been adopted at the local level. In addition to the District of Columbia and major metropolitan areas such as Chicago, Los Angeles, New York, and Philadelphia, 13 New Jersey municipalities have adopted paid sick leave ordinances — Bloomfield, East Orange, Elizabeth, Irvington, Jersey City, Montclair, Morristown, New Brunswick, Newark, Passaic, Paterson, Plainfield, and Trenton.

New Jersey’s Paid Sick Leave Law

When Gov. Phil Murphy signed the New Jersey Paid Sick Leave Act ([A. 1827](#)) into law on May 2, New Jersey became the 10th state to require employers to provide paid sick leave. When the law takes effect on October 29, New Jersey employers will have to allow employees to earn and use up to 40 hours of paid sick leave per year. Importantly, the new law will preempt all existing county and municipal paid sick leave ordinances, resolutions, laws, rules, or regulations. Moreover, it will prohibit any governing body of a New Jersey county or municipality from adopting any ordinance, resolution, law, rule, or regulation regarding earned sick leave in the future.



Covered Employers and Eligible Employees

The new law applies to employers in New Jersey, regardless of their size, including businesses, educational institutions, nonprofits, corporations, temporary help agencies, public employers that are not already required to provide paid sick leave, and any other entity that employs workers in the state.

Most employees working in the Garden State will be eligible for the new benefit, with the following limited exceptions:

- *Per diem* healthcare employees
- Construction workers covered by a collective bargaining agreement
- Public employees who receive paid sick leave benefits under another state law or regulation

Accruals and Frontloading

Beginning on October 29, or the first day of their employment if later, employees will accrue a minimum of one hour of paid sick leave for every 30 hours worked, up to a maximum of 40 hours per benefit year unless the employer chooses to provide a higher limit. As an alternative to accrual, employers may opt to frontload the full annual amount of paid sick leave at the beginning of the benefit year. Whether accrued or frontloaded, leave must be paid at the same rate and with the same benefits as the employee normally earns.

The new law includes special provisions for employees of temporary help service firms, who will accrue sick leave based on the time worked with the firm rather than time worked for each firm client for whom the employee may perform services.

Comment. This provision may impose new and additional administrative burdens and costs on temporary help service firms whose employees typically work off-site and often on irregular schedules. These firms should closely coordinate with their clients to ensure compliance with the new law's requirements.

Benefit Year

Employers may choose their own benefit year — the 12-consecutive-month period during which employees will earn and use sick leave. Once established, the benefit year cannot be changed without notice to the Commissioner of Labor and Workforce Development.

Existing PTO Policies

Employers can use existing paid time off (PTO) or other policies to satisfy the new mandate, as long as they provide the same or a greater amount of leave that accrues at the same or greater rate and can be used for the same purposes as under the new law.

Carryover, Caps, and Cashouts

Whether sick leave is accrued or frontloaded, the new law does not permit employers to adopt “use it or lose it” policies. While employees may carry over unused accrued paid sick leave to the following benefit year, employers may cap carryover at 40 hours each benefit year. Alternatively, employers may offer employees the choice to cash out all or half or their unused earned sick leave in the final month of the benefit year and carry over the remaining leave. If the leave is frontloaded, employers must either pay out unused leave in the last month of the benefit year or allow the employee to carry it over to the next benefit year.

Unless an employer policy or collective bargaining agreement provides otherwise, employees are not entitled to cash out their unused, accrued sick leave on termination, layoff, or other separation from employment. However, any unused earned sick time must be reinstated if the employee is rehired by the same employer within six months of termination, layoff, or separation.

Permissible Use

Under the new law, eligible employees will be able to use accrued sick leave for any of the following reasons:

- Diagnosis, care, treatment of, or recovery from their own or a family member’s mental or physical condition (including preventive care)
- Counseling, legal services, or proceedings relating to their own or a family member’s status as a victim of domestic or sexual violence
- Closure of the workplace, school, or childcare facility due to a public health concern
- To attend school-related conferences, meetings, or events concerning their children

Broadly defined for these purposes, the term “family member” includes:

- An employee’s child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent
- A spouse, domestic partner, or civil union partner of an employee’s parent or grandparent
- A sibling of an employee’s spouse, domestic partner, or civil union partner
- Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship

Regardless of carryover, an employer may cap annual usage at the accrual limits discussed above. While new hires will begin accruing leave at the start of their employment, employers generally may prevent them from using it until after the 120th day of employment. In addition, an employer may set a minimum increment for using leave, but it cannot exceed the number of hours the employee was scheduled to work.

Employers cannot require employees who request leave to find a replacement to cover their absence. While employers may allow employees to work additional hours or shifts during the same or following pay period instead of using sick leave, they cannot require employees to do so. If employees work extra hours or shifts in lieu of using sick time, the absence cannot be deducted from their accrued leave. However, employers need not agree to any arrangement that would require the payment of overtime.

Notice and Recordkeeping

Employers can require up to seven days’ advance notice of foreseeable absences. If the need for leave is unforeseeable, employees must provide as much notice as practicable. Employers can also prohibit the use of foreseeable leave on certain dates, and require documentation if unforeseeable sick leave is used on those dates. For absences of three or more consecutive days, employers may require reasonable documentation that leave was for a permissible purpose.

Employers will be required to post a workplace notice and provide individual notices to each employee of their rights under the new law within 30 days after issuance by the New Jersey Department of Labor and Workforce Development (department). Going forward, notices will have to be provided to employees at the time of hire.

Records that document hours worked and earned sick leave used by employees must be maintained for a period of five years, and will have to be made available for inspection by the department on request.

Enforcement and Penalties

The new law will be enforced by the department, but it also provides a private right of action. Employers that violate the new law will be subject to the remedies and penalties provided under the state's Wage and Hour Law, including sanctions and potential criminal liability. A prevailing employee in a civil action may be awarded wages owed as a result of the violation plus an equal amount of liquidated damages, along with costs and attorney's fees.

The law prohibits employers from taking retaliatory or discriminatory action against an employee for requesting or taking earned sick leave. In fact, it contains a rebuttable presumption of retaliation if an adverse action is taken against an employee within 90 days of activity protected by the law, including:

- Filing a complaint with the department
- Informing any person of an employer's alleged violation of the law
- Cooperating with the department's or other investigation of an alleged violation
- Opposing any policy, practice, or act prohibited by the law

In Closing

When the New Jersey Paid Sick Leave Act goes into effect on October 29, it will preempt current and future municipal paid sick leave ordinances, eliminating the current patchwork of local sick leave laws. New Jersey employers should promptly review their leave management strategies, and update their paid leave policies and handbooks to ensure compliance with the new statewide requirements.

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