# The New Sick Leave Law in New Jersey - What Employers Need to Know

*Legal Alert*

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On Wednesday, May 2, 2018, Governor Phil Murphy signed a new law requiring all private-sector employers in New Jersey to provide paid sick time off, regardless of the size of the business or the number of hours an employee works. The new law becomes effective in 180 days, and makes New Jersey as one of the few states to enact such a far reaching law. Under the new sick leave law, all New Jersey workers must accrue, at a minimum, one hour of sick leave for every 30 hours worked, and employers must pay employees for earned sick leave at the same pay rate – including the same benefits – that the employee would normally earn. After its effective date on October 29, 2018, local laws that mandated sick leave will be preempted.

Under the new law, employees can carry forward up to 40 hours of unused, earned sick time to the next benefit year; but, employers do not need to permit employees to accrue, use, or carry forward, more than 40 hours. Unless an employee has accrued sick leave prior to the effective date, the earned sick leave will begin to accrue on the effective date. As for new employees, after its effective date, an employee will able to use the earned sick leave beginning on the 120th day after his or her employment starts, unless the employer agrees to an earlier date.

To limit employees from carrying over hours, the law permits employers to offer payment for unused earned sick leave in the final month of the benefit year. Employers should note, however, if the employee declines a payment for unused earned sick leave, or agrees to a partial payment, the employee may carry up to 40 hours of leave forward to the following year. If the employee accepts the full payment of unused earned sick leave, the employer must make the entire accrual for the following year available to that employee at the beginning of the next benefit year.

For employers with unions, the benefits of the law are waivable during collective bargaining negotiations.

The law also prohibits retaliatory actions against an employee for using or requesting to use earned sick leave, or for filing a complaint about an employer violation of the law's provisions.

**When can an employee use the new sick leave?**

The new law provides that employees may use earned sick leave for these purposes:

1. Diagnosis, care, treatment, or recovery related to the employee's mental or physical illness;
2. Care of a family member during diagnosis, care, treatment, or recovery related to a family member's illness;
3. Certain absences resulting from the employee or a family member being a victim of domestic or sexual violence;

4. Time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, in connection with a public health emergency or a determination that the presence of the employee or child in the community would jeopardize the health of others; or
5. Attending school-related conferences, meetings, or events, or to attend other meetings regarding care for the employee's child.

"Family member" is broadly defined to include a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

**Are there any exceptions?**

The law allows employers to black out certain dates that cannot be taken off, and exempts per-diem hospital employees and construction workers under contract pursuant to a collective bargaining agreement. Employers are also permitted to require "reasonable documentation" when an employee seeks leave for three or more consecutive days. Employers can also require advance notice when the need to use earned sick leave is foreseeable.

**What else do employers need to know?**

Importantly, employers are in compliance with the new law if the employer offers paid time off (PTO), which is fully paid and includes, but is not limited to, personal days, vacation days, and sick days that is accrued at a rate equal to or greater than the rate described above. If, however, an employer limits the use of the paid time off for personal days and/or vacations pursuant to a policy that makes that time unavailable for illnesses (e.g., the employer's policy prohibits the use of such time without advanced notice), then the paid time off subject to that policy will not be considered in evaluating compliance.

Employers must retain records documenting hours worked by employees and earned sick leave taken by employees for a minimum of five years. Violations of any provision of the new law will be regarded as a failure to meet the requirements of the New Jersey State Wage and Hour Law, which includes damages suffered by the employee plus an equal amount of liquidated damages.

If you have any questions about this legal alert or for guidance on complying with the New Jersey Sick Leave Law and other federal and state employment laws, please feel free to contact Adam Gersh or any member of Flaster Greenberg's Labor & Employment Department.

**ATTORNEYS MENTIONED**

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