

# New Jersey Legislature Passes Paid Sick Leave Bill

By James M. McDonnell

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On April 12, 2018, the New Jersey State Senate, by a vote of 24-12, passed the New Jersey Paid Sick Leave Act (the “Act”). The Act, which passed the Assembly last month by a 50-24 margin, requires businesses of all sizes to provide up to 40 hours of paid sick leave to employees during an employer-established benefit year. The Act, which Governor Phil Murphy pledged to sign, expressly preempts municipal paid sick leave ordinances passed in cities and towns, such as Newark, Morristown, and Paterson, in an effort to provide uniform obligations to businesses operating within the State. The Act includes the following provisions:

### Accrual

The Act requires businesses to establish a benefit year of 12 consecutive months during which an employee may accrue up to 40 hours of paid sick leave benefits at a rate of one benefit hour for every 30 hours worked. Businesses, moreover, cannot alter the benefit year without providing notice to the Commissioner of Labor and Workforce Development. Alternatively, and perhaps requiring much less administrative work, a business may simply offer, or “frontload” 40 hours of paid sick time or utilize a paid-time-off (PTO) policy. However, any such 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 employees working in the state of New Jersey 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 and, therefore, are ineligible for the benefits provided. Employees of temporary service firms, however, are expressly included within the definition and paid sick leave benefits accrue on the basis of total time worked with the firm, not for each separate client for whom the employee may perform services.

### Covered Employers

The Act applies to all businesses and, unlike earlier proposals, does not appear to exempt smaller employers from the obligation to provide paid sick leave benefits. The Paid Sick Leave Act also may affect pricing by temporary help service firms as the law expressly requires such businesses to provide paid sick leave benefits based upon the total time with the temporary help service firm itself, rather than the individual clients.

### Reinstatement and Increments of Use

Paid sick leave benefits survive transfers, separations followed by a reinstatement within six months, and acquisitions by successor companies. The Act provides the business latitude in establishing the increments in which an employee may use paid sick leave benefits; however, the largest increment may be no longer than the number of hours the employee is scheduled to work during the particular shift.

## Leave Reasons

An eligible employee may use paid sick leave benefits for any one of the following reasons:

- Diagnosis, care, treatment, or recovery for the employee's own mental or physical condition (inclusive of preventive care);
- Diagnosis, care, treatment, or recovery for a family member's mental or physical condition (including preventive care);
- Time needed as a result of an employee's or family member's status as a victim of domestic or sexual violence (including counseling, legal services, or participation in any civil or criminal proceedings related to same);
- Time when the workplace, school, or childcare is closed by order of a public official due to a public health concern; and
- Time to attend a school-related conference or meeting.

The definition of "family member" is quite extensive and includes any individual "whose close association with the employee is the equivalent of a family relationship."

## Employee Notice and Documentation

The Act permits employers to require advance notice of foreseeable absences and allows businesses to 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

While the employee may carry over accrued but unused paid sick leave benefits, the Act does not require the employer to provide more than 40 hours of paid sick leave in a single benefit year. Moreover, unless the business maintains a policy that states otherwise, the Act does not require an employer to pay out an employee's earned but unused sick leave upon separation from employment.

## Employer Recordkeeping and Notification

The Act contains recordkeeping and notification requirements. Businesses must maintain records documenting hours worked and earned sick leave used by employees. Businesses must maintain these records for a period of five years and those records must be made available for inspection upon request by the Department of Labor and Workforce Development. Businesses must also post a notification in the workplace and provide individual notice to each employee within 30 days after the Department of Labor issues the notification and, thereafter, at the time of each employee's hiring.

## Enforcement

The Paid Sick Leave Act provides for a private right of action that includes, among other remedies, liquidated damages in an amount equal to the actual damages sustained by an aggrieved employee (*i.e.*, wages multiplied by two).

Moreover, the Act contains an anti-retaliation provision that sets forth a "rebuttable presumption" of retaliation if an adverse action is taken against an employee within 90 days of specified protected activity (*e.g.*, filing a complaint, cooperating in an

investigation, informing others of their rights under the Act, and so on).

### Effective Date

The New Jersey Paid Sick Leave Act takes effect 180 days after the Governor signs it into law. Given the Governor's commitment to passing the Act, businesses that operate in New Jersey should review their PTO and sick leave policies to determine compliance with the provisions of the Act.

Jackson Lewis attorneys are helping clients create compliant and comprehensive leave management programs that include paid sick leave policies, handbook updates, and notices. For additional information about New Jersey Paid Sick Leave Act, a leave management program analysis, or other leave management issues, contact the Jackson Lewis attorney with whom you regularly work.

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