

New Jersey Employers Are Now Required to Provide Paid Sick Leave to Employees: What Are The Practical Implications?

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May 2018

On May 2, 2018, Governor Murphy signed The Earned Sick and Safe Days Act, which enables employees to accrue paid sick time. Under the Act, one of the most expansive paid sick leave programs in the nation, an employee will earn 1 hour of sick time for every 30 hours worked, with a cap at 40 hours. The Act will impact many employers in New Jersey who are already adjusting to other recent employee-friendly bills working their way through the legislature.

The Act will take effect on October 29, 2018, and the following is a big picture overview of the Act and its likely effect on New Jersey employers:

Who Is Covered?

The Act covers all employees, both private and public, except for employees performing service in the construction industry that are covered by a collective bargaining agreement, per diem health care employees, and public employees who is provided with sick leave with full pay pursuant to any other law, rule or regulation of the State.

What Is Covered?

The law enables employees to earn paid leave time for many covered events – including:

- Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;
- Time needed for the employee to care for a family member during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health

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condition, or preventive medical care for the family member;

- Absence needed due to circumstances resulting from the employee or a family member being a victim of domestic or sexual violence, if the leave is to obtain medical attention, counseling, relocation, legal or other services;
- 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, by order of a public official due to an epidemic or other public health emergency; and
- Time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, etc.

How Much Time Is Covered?

The employee will accrue 1 hour of earned sick time for every 30 hours worked, up to 40 hours, except that an employer may provide an employee with the full amount of earned sick leave for a benefit year on the first day of each benefit year. If an employer goes this route, the employer shall either provide the employee a payment for the full amount of unused earned sick leave in the final month of the benefit year or carry forward any unused sick leave to the next benefit year.

The employer will be allowed to designate the benefit year as any 12-month period, but once it is established, it cannot be changed without notification to the New Jersey Department of Labor and Workforce Development.

When May The Employee Use The Covered Time?

For an employee hired prior to October 29, 2018, the leave will accrue beginning on October 30, 2018, and the employee will be able to use any accrued leave beginning on the 120th day after the employee is hired.

For an employee hired after October 29, 2018, the leave will accrue beginning on the date of hire and the employee will be able to use the leave beginning on the 120th day after the employee is hired, unless the employer agrees to an earlier date. Employees may subsequently use earned sick leave as soon as it is accrued.

If the employee has accrued earned sick leave with the employer before October 29, 2018, this will change these calculations.

Who Is A Family Member?

A "family member" includes 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.

Additional Guidance For Employers

- Employers with existing Paid Time Off (PTO) methods of time calculation, which combine sick, vacation and personal time, can apply that time to satisfy the obligations under the Act, but that time must be usable in the same manner as that provided under the Act.
- The monies paid out for sick time must be “at the same rate of pay with the same benefits as the employee normally earns, except that the pay rate shall not be less than the minimum wage required for the employee pursuant to” New Jersey’s Wage and Hour Law.
- Employers may not take retaliatory personnel action against an employee for the use or requested use of earned sick leave or for filing of a complaint for an employer violation.
- The Act establishes requirements for record keeping and for notifying workers of their rights related to paid sick leave.
- The Act provides for penalties and other remedies for non-compliance with requirements, based on the penalties and remedies for non-compliance with the New Jersey State Wage and Hour Law.
- Employers cannot require employees to work extra time to make up for taking leave time, although employees could voluntarily work extra hours, if available.

Recommendations for Employers

Employers should consult with employment counsel as to how they can roll out conformed policies by October 30, 2018. They should also:

- Be prepared to train Human Resources and other implicated individuals to implement the new policies, and
- Make sure that internal record-keeping processes are sufficient to account for time accrued, and to monitor time used.

This Alert is intended to serve as an initial education on the Act. For a full review of the Act as signed into law, see http://www.njleg.state.nj.us/2018/Bills/A2000/1827_R1.HTM

To learn more about the impacts the new law may have on your business, or if you have questions regarding the legal sufficiency of your employee manuals or policies, please contact **Jemi Goulian Lucey**, the author of this Alert.