



JACQUELINE VORONOV

**For More Information
Please Contact**

Jacqueline Voronov
jvoronov@pecklaw.com
201.343.3434

New Jersey Becomes The Tenth State To Provide Workers With Paid Sick Leave

For the first time in state history, paid sick leave will soon be available to most New Jersey employees under a sweeping new law that Governor Phil Murphy signed on May 2, 2018. The New Jersey Earned Sick and Safe Days Act (A-1827) (the “Act”), which goes into effect on October 29, 2018, provides the vast majority of New Jersey’s private sector workers with mandatory paid sick leave benefits. New Jersey joins nine other states in addition to the District of Columbia to offer a statewide paid sick leave policy. Once it takes effect, the Act will supersede local sick leave ordinances currently enacted by 13 New Jersey municipalities.¹

The key provisions of the law and their impact on employers doing business in New Jersey are summarized below:

Who is Covered: The Act applies to all private employers with employees in New Jersey, including temporary help firms, irrespective of company size. There is no exception for “small businesses” (i.e., businesses with 10 or less employees). Public employers already required to provide employees with sick leave pursuant to any other state law or regulation are not covered by the Act.

With only a few exceptions, the Act covers all employees engaged in service for compensation across all industries. Excluded from the Act are construction workers covered by collective bargaining agreements, per diem healthcare employees and public employees who already receive more generous sick leave under other state laws.

Accrual, Carryover and Cap: Existing employees will begin to accrue leave upon the effective date of the Act, while newly hired employees begin to accrue leave starting on the date of hire. Newly hired employees are not eligible to use accrued sick leave until 120 days after hire, unless the employer agrees to an earlier date.

Employers will be required to provide their employees with one hour of paid sick leave for every 30 hours worked and to pay them for earned sick leave at the same rate of pay with the same benefits as the employee normally earns. The law caps an employee’s annual accrual, use and carryover of earned sick leave at 40 hours per year. Employers have the option of “front-loading” leave by providing an employee with “the full complement of earned sick leave for a benefit year” (i.e., 40 hours) on the first day of each benefit year. An employer may choose the increments in which its employees may use earned sick leave, provided that the largest increment of earned sick leave an employee may be required to use is the number of hours the employee was scheduled to work on that shift.

¹ There are presently 13 New Jersey municipalities with paid sick time ordinances: Bloomfield, East Orange, Elizabeth, Newark, Jersey City, Paterson, Passaic, Trenton, Montclair, Irvington, New Brunswick, Plainfield, and Morristown. All of these ordinances will become moot upon the effective date of the Act.

Notably, if an employer already provides paid time off (“PTO”) to its employees (i.e. vacation or personal days), the employer can continue to rely upon its existing PTO policy to satisfy the requirements of the Act, as long as such policy provides at least 40 hours of paid leave per year and as long as the PTO may be used for the purposes set forth in the Act.

Notice Requirements: If an employee’s need to use earned sick leave is foreseeable, an employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin. However, if the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable. An employer may require reasonable documentation that the leave is being taken for a permitted purpose under the Act for earned sick leave of three or more consecutive days. Employers are permitted to “black out” certain dates that employees may not use leave, provided that this policy is applied uniformly to all employees.

Permissible Uses of Paid Sick Leave: Under the law, employees will be permitted to use paid sick time for any of the following reasons:

1. The diagnosis, care, or treatment of, or recovery from an employee’s own mental or physical illness or injury or for preventative medical care for the employee.
2. To aid or care for a family member (“family member” is broadly defined²) during diagnosis, care, or treatment of, or recovery from, the family member’s mental or physical illness, injury or other adverse health condition, or during preventative medical care for the family member.
3. In connection with a child of the employee to attend a school-related conference, meeting, function, or other event required by the school, or to attend a meeting regarding care provided to the child.
4. Due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence if the leave is to allow the employee or family member to obtain medical, legal or other victim services.
5. When 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, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee’s family in need of care by the employee, would jeopardize the health of others.

Anti-Retaliation Provision: The law prohibits any employer from discriminating or retaliating against an employee because the employee uses or requests paid sick leave or files a complaint against the employer for a violation of the law. An employer also will not be permitted to count earned sick leave taken under the law as an absence that may result in discipline, discharge, demotion, suspension or any other adverse employment action.

² The law expansively defines the term “family member” to include an employee’s “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.”

Importantly, the anti-retaliation provision of the Act includes a rebuttable presumption that an employer's actions are unlawful if it takes adverse action against an employee within 90 days of the employee engaging in activity protected under the Act. This includes such actions as filing a complaint with the Department of Labor, cooperating with an investigation, opposing policies and practices that are unlawful under the Act or informing other individuals of their rights under the Act. Employers found guilty of violating the Act may be required to pay actual damages plus liquidated (double) damages.

Payout: The Act gives employers the option of offering to pay out employees for accrued, but unused sick leave at the end of the year. Employees have ten days from the date of the offer to accept the payout, or choose to roll over the leave to the following year (subject to a 40 hour cap). For employers who frontload the leave in the beginning of the year, the Act requires these employers to pay out employees for unused sick leave at the end of the year, or carry forward the unused leave to the next year. Nothing in the Act requires employers to pay out unused sick time to employees upon termination of employment, unless the employer's policy (or Collective Bargaining Agreement) provides otherwise. If an employee is separated from employment but then reinstated within six months, all of the employee's unused and accrued sick time must be reinstated.

Records and Notice: The Act requires employers to maintain records of sick leave used for a period of five (5) years. Employers must also post a Notice of Employees' Rights under the Act in the form provided by the Department of Labor, and provide this notice to each employee within 30 days after the Department of Labor issues the notification. Employers must also issue this notice to new employees upon hiring.

The Bottom Line For Employers: Virtually all employers in New Jersey will feel the impact of these new mandates, especially employers who do not currently provide employees with any paid sick time benefits. In anticipation of the effective date, employers should seek guidance from their employment counsel and evaluate their existing policies and practices to ensure compliance with the Act.

The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.