



ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

New Jersey Enacts Earned Sick Leave Law

Employees Entitled to 40 Hours Annually

By Bennett Pine

New Jersey became the 10th state in the nation to require employers to grant paid sick leave to full- and part-time employees when the Earned Sick Leave Law fully went into effect on February 26, 2019. The law was signed by Governor Phil Murphy in May 2018, and employees began to accrue paid sick leave time on October 29, 2018.

Who Is Covered

Employers are now required to grant paid sick leave to all full- and part-time employees. However, employers are not required to provide paid sick leave to:

- Individuals employed in the construction industry under a union contract.
- Per diem health care employees.
- Public employees provided with sick leave at full pay under any other NJ law or rule.
- Independent contractors who do not meet the definition of an employee under NJ law.

For What Purposes

New Jersey employers are now required to permit employees to use earned sick leave to:

- Care for their own or a family member's physical or mental health or injury.
- Address domestic or sexual violence.
- Attend a child's school-related meeting, conference or event.
- Take care of children when school or child care is closed due to an epidemic or public health emergency.

Note: If an employer already has a paid sick leave policy for employees, it must meet or exceed the requirements of the new law.

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**who's
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Bennett Pine is a shareholder in Anderson Kill's New York and

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How Paid Sick Leave Can Be Used

Employers are not required to permit employees to use more than 40 hours of sick leave in a benefit year. Employees can use accrued sick time after the 120th day of their first date of employment for the following:

- Diagnosis, care, treatment of, or recovery from a mental or physical illness, including preventive medical care.
- Aid or care for a covered family member during diagnosis, care, treatment of, or recovery from a mental or physical illness, including preventive medical care.
- Circumstances related to their own or a family member's status as a victim of domestic or sexual violence (including the need to obtain related medical treatment, seek counseling, relocate, or participate in related legal services).
- Closure of their workplace or a child's school/childcare facility because of a public official's order relating to a public health emergency.
- Attending a child's school-related conference or meeting regarding care provided in connection with a health condition or disability.

The new law broadly defines "family member" to include individuals related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

Employers may not require an employee to find a replacement to cover their absence.

How Paid Sick Leave Can Be Accrued

Employees accrue one hour of earned sick leave for every 30 hours worked, up to a maximum of 40 hours of paid leave per benefit year.

Employee accrual began on October 29, 2018, or the first day of work, whichever is later.

Employees may utilize paid sick leave beginning on February 26, 2019, or 120 days after the first day of employment, whichever is later.

Benefit Year and Notice of Employee Rights

An employer must establish a single benefit year for all employees. In order to change the benefit year, the employer must provide written notice to employees and to the commissioner of the New Jersey Department of Labor at least 30 days in advance.

The employer must give each employee written notice of their right to earned sick leave, including accrual and use of sick leave, and their right to file a complaint and be free from retaliation. The notice must provide the benefit year start and end dates. Employees have a right to the notice in English and, if available on the New Jersey Department of Labor and Workforce Development website, their primary language (the notice is available in English plus 12 other languages). A sample notice is available here: https://nj.gov/labor/forms_pdfs/mw565sickleavposter.pdf.



Payment of Earned Sick Leave

During a period of earned sick leave, the employer must pay employees at the same rate they normally earns (which must be at least the state minimum wage). To calculate the rate of earned sick leave pay for an employee with fluctuating hours/pay, working two or more different jobs, paid by piecework, or whose pay includes gratuities, food or lodging: Add together the total earnings, exclusive of overtime pay, for the seven most recent workdays, then divide that by the total hours worked during that seven-day period. For base plus commission or commission only, the earned sick leave pay rate is the hourly base wage or state minimum wage, whichever is greater.

Employee Transfers, Rehires and Successor Employers

If an employer transfers an employee within New Jersey, the employee keeps their accrued/advanced sick leave.

If an employer terminates, lays off or furloughs an employee, then rehires or reinstates them in New Jersey within six months, the prior accrued/advanced sick leave must be returned to the employee.

If an existing employer is replaced, all employees keep their accrued/advanced sick leave from the predecessor employer.

Advanced Earned Sick Leave

Instead of applying the accrual method described above, an employer may choose to advance at least 40 hours of earned sick leave to all employees on the first day of the benefit year, for use throughout the benefit year. For an employee who begins employment during the benefit year, employers may prorate advanced earned sick leave for the remainder of the benefit years, so long as they track the employee's actual work hours and the amount of sick leave accrued.

Recordkeeping

Employers must keep and maintain records documenting compliance with the law for five years, including employee hours worked and all earned sick leave that has been accrued/advanced, used, paid out, or carried over. The reason for using earned sick leave must be kept confidential, unless the employee gives written permission to disclose it. Records must be made available to the NJ Labor Department if requested.

Advance Notice

If the need is foreseeable, the employer can require up to seven days' advance notice of an employee's intention to use earned sick leave. If the need is unforeseeable, the employer may require the employee to provide notice as soon as is practical, provided the employer stated that requirement in advance. If the employer has not stated the notice requirements, it must allow the employee to use the unforeseeable earned sick leave without having provided any prior notice. An employer may prohibit the employee from using foreseeable earned sick leave during high-volume periods or special events, but must provide reasonable notice of those dates.

Documentation

Employers can require reasonable documentation if an employee uses more than three consecutive workdays as earned sick leave or where the employee's need for earned sick leave is not foreseeable and is being sought for use during high-volume periods or special events. The law prohibits employers from requiring the employee to specify the reason for earned sick leave if less than three days.

Unused or Carried-Over Earned Sick Leave

An employee may carry over up to 40 hours of unused earned sick leave to the next benefit year. However, employers are required only to let an employee use up to 40 hours of earned sick leave per benefit year. An employer may choose — but is not required — to pay an employee for unused earned sick leave at the end of the benefit year.



Retaliation

An employer cannot retaliate against an employee for requesting or using earned sick leave, filing a complaint with the NJ Labor Department, or informing any other person of his or her rights under the law. Retaliation includes any discipline, discharge, demotion, suspension, loss or reduction of pay, or other adverse action. This includes “no fault” attendance policies, where an employee receives a point or demerit or is subjected to discipline or loss of a promotional opportunity due to an absence.

Complaints

If an employer allegedly violates the law, the NJ Labor Department will notify the employer by certified mail and provide them the opportunity to request a hearing, which must be received within 15 days of receipt of the notice. If the dispute cannot be resolved in an informal settlement conference, it will be forwarded for a formal hearing.

If you have any questions about the new New Jersey Earned Sick Leave Law, please contact Bennett Pine at bpine@andersonkill.com or (973) 642-5006. ▲

