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NEW JERSEY'S NEW PAID SICK LEAVE LAW: WHAT EMPLOYERS NEED TO KNOW

Insights
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New Jersey has now become the tenth state to enact a statewide mandatory paid sick leave law. The New Jersey Paid Sick Leave Act was signed into law today by Governor Phil Murphy and will go into effect on October 29, 2018. Once effective, it will require New Jersey employers of all sizes to provide up to 40 hours of paid sick leave per year to covered employees.

Just about every employer with workers in New Jersey will feel the impact of this new law in one way or another. Consequently, you should start preparing now to ensure your policies and practices are compliant with the Act. Here's an overview on what New Jersey employers need to know:

WHO IS COVERED?

Covered Employees: The Act applies to most employees working in the State "for compensation." The Act expressly excludes employees in the construction industry employed under a collective bargaining agreement, per diem healthcare employees, and public employees who already have sick leave benefits.

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Covered Employers: The Act broadly applies to any business entity, irrespective of size, that employs employees in the State of New Jersey, including a temporary help service firm. It expressly excludes public employers required to provide their employees with sick leave.

HOW IS PAID SICK LEAVE ACCRUED?

Accrual Period: The Act requires employers to designate any period of 12 consecutive months as a "benefit year." Employers cannot change the established benefit year without first notifying the New Jersey Department of Labor and Workforce Development. Under the Act, current employees begin accruing sick time on the effective date of the Act. New employees hired after the effective date of the Act begin accruing sick time on the first date of their employment.

Accrual Limits: In each benefit year, an employee will accrue up to 40 hours of sick time at a rate of one hour for every 30 hours worked. Alternatively, an employer may "frontload" the full 40 hours at the beginning of the benefit year. Employers with existing paid time off (PTO), personal days, vacation days, and sick day policies may utilize those policies to satisfy the requirements of the Act as long as employees can use the time off as required by the Act.

In the case of a temporary help service firm placing an employee with client firms, paid sick leave will accrue on the basis of the total time worked on assignment with the firm, not separately for each client firm to which the employee is assigned.

HOW CAN PAID SICK TIME 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 reasons:

- Diagnosis, care, or treatment of, or recovery from, an employee's own mental or physical illness, including preventive medical care;
- Aid or care for a covered family member during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, including preventive medical care;
- Circumstances related to an employee's or their 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 an employee's workplace or of a school/childcare of an employee's child because of a public official's order relating to a public health emergency; and
- Time to attend his or her child's school-related conference or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

The Act 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 the employee's absence.

WHAT RULES ARE IN PLACE REGARDING CARRYOVER AND PAYOUT OF PAID SICK TIME?

Maximum Carryover: The Act does not require employers to permit employees to carry over more than 40 hours of accrued sick time in a single benefit year.

Optional Buyout: Employers may, but are not obligated to, offer to pay employees for their unused accrued sick time in the final month of the benefit year. If the employee agrees to receive the payment, they may

choose a payment for the full amount of their unused accrued sick time or for 50 percent of such time.

The payment amount shall be based on the same rate of pay that the employee earns at the time of the payment. If an employer frontloads the entire amount of sick time, it must either pay the employee for the full amount of unused accrued sick time in the final month of the employer's benefit year or carry forward any unused sick time to the next benefit year. Employee approval is not required.

IN WHAT INCREMENTS CAN THE PAID SICK LEAVE BE USED?

The Act provides employers with the discretion to choose the increments in which its employees may use accrued sick time. However, the largest increment chosen may not be larger than the number of hours an employee was scheduled to work in a given shift. For example, if an employee is scheduled to work a 7-hour shift, the employer cannot mandate that the employee use paid sick time in increment of 8 hours.

WHAT HAPPENS UPON TRANSFER, SEPARATION, OR REINSTATEMENT OF EMPLOYMENT?

Transfer Of Employment To A Related Or Successor Employer: If an employee is employed by a successor employer or transferred to a separate division, entity, or location of the same employer, the employee will retain and be entitled to use all accrued sick time.

Separation Of Employment: Unless the employer has a policy or collective bargaining agreement providing for the payment of accrued sick leave upon termination, resignation, retirement or other separation from employment, the Act does not require the employer to pay employees for unused accrued sick leave upon the separation from employment.

Reinstatement Of Employment: 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.

WHAT KIND OF NOTICE AND DOCUMENTATION IS REQUIRED?

Foreseeable Absences: Employers may require advance notice, not to exceed seven calendar days, of the intention to use the leave and its expected duration. Employers may require employees to make a reasonable effort to schedule the use of sick leave in a manner that does not unduly disrupt the operations of the employer. Employers may prohibit employees from using foreseeable sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates.

Unforeseeable Absences: Employers may require employees to give notice of the intention to use the leave as soon as practicable, provided that the employer has notified the employee of this requirement.

Absences Of Three Days Or More: If an employee is absent for at least three consecutive days, the employer may require documentation that confirms the employee used sick leave for a covered purpose.

WHAT POSTING, NOTICE, AND RECORDKEEPING REQUIREMENTS ARE IN PLACE?

Employers must post a notification of employees' rights under the Act and provide employees with a written copy of the notice within 30 days after the Department has issued a model notice and each time thereafter when an employee is hired or requests such a notice. Additionally, employers must retain records documenting hours worked by employees and paid sick time taken by employees, for a period of five years, and permit the Department access to those records.

WHAT IF WE HAVE A COLLECTIVE BARGAINING AGREEMENT?

The Act does not apply to employees covered by a collective bargaining agreement (CBA) that is in effect at the time of the effective date of the Act, at least until the CBA expires. Even then, employees or their representatives may waive the rights under the Act during the negotiation of the CBA.

WHAT ABOUT LOCAL PAID SICK LEAVE MUNICIPAL ORDINANCES?

The Act preempts all existing and future municipal ordinances in New Jersey regarding paid sick time. 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.

HOW WILL THE PAID SICK LEAVE LAW BE ENFORCED?

Employees may sue their employers for violating the Act and can seek actual damages suffered as a result of the violation, plus an equal amount of liquidated damages.

HOW DOES THE ANTI-RETALIATION PROVISION WORK?

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, cooperating with an investigation, opposing policies and practices that are unlawful under the Act, or informing other individuals of their rights under the Act.

WHAT SHOULD EMPLOYERS DO NOW?

A full copy of the recently enacted bill can be found [here](#). In anticipation of the effective date of this new law, you should review your paid time off, vacation, or

other paid leave policies to determine whether you will have to implement a paid sick time policy for any of your employees or amend your existing policies to ensure compliance with the Act. You should also inform managers and supervisors of any new policy changes and of the importance of the provisions of the law prohibiting retaliation.

You should also consider revising your employee handbooks to account for these changes. For example, if you choose not to pay out accrued but unused sick leave upon termination, you must make that abundantly clear in your written policies. Finally, you should be on the lookout for the poster and template notice issued by the Department.

For more information on how this legislation will affect your workplace, contact any attorney in our [New Jersey office](#) at 908.516.1050 or your Fisher Phillips attorney.

This Legal Alert provides an overview of a recent update to New Jersey law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.