



NJ Publishes FAQs To Clarify Requirements Of Paid Sick Leave Law

Insights
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Just a few short days before the New Jersey Paid Sick Leave Act will become law, requiring New Jersey employers of all sizes to provide up to 40 hours of paid sick leave per year to covered employees, the state Department of Labor and Workforce Development (DOL) published a Frequently Asked Questions (FAQs) document aimed at addressing unanswered questions about the law. This comes on the heels of the agency publishing a mandatory workplace poster and a set of proposed regulations.

Here is a summary of the top 10 things we learned from the FAQs that you will want to absorb prior to the October 29 implementation date:

1. **An employer who has a compliant PTO policy is not required to record leave used under the Act separate from leave used for other purposes.**

If an employer has a compliant PTO policy, it is not required to record hours of leave used for the purposes listed in the Act separately from hours of leave used for other purposes under the PTO policy. For example, both vacation leave and the leave to care for an ill family member could simply be recorded as PTO.

2. **Where an employee exhausts their PTO during the benefit year, but where none of the leave taken during the benefit year was for any of the purposes set forth within the Act, the employer is not required to payout additional time or permit the carry-over of additional time.**

Relative to payout and carrying over, the employer with a compliant PTO policy is required only to treat the PTO in the same manner as the law requires earned sick leave be treated. If the employee has exhausted their PTO during the benefit year, it does not matter for what purpose under the compliant PTO policy the leave was taken. Regardless of the reason(s) for the leave, there is no PTO to be paid out or carried over and no such payout.

3. **An employer can use different methods of awarding paid sick time for different types of employees.**

An employer can use different methods for awarding sick time to full-time employees and part-time employees. For example, an employer may advance 40 hours of paid sick leave to its full-time employees, but use the accrual method for its part-time employees.

4. **An employer may prorate advanced paid sick leave for employees hired during the benefit year based upon anticipated hours, but must carefully track hours and award any additional paid sick leave.**

If an employee is hired during a benefit year, an employer may advance paid sick leave of less than 40 hours based upon the anticipated hours the new hire will work for the remainder of the benefit year. However, an employer must track actual hours worked and award additional sick leave if the new hire works more hours than anticipated. The DOL suggests that an employer may avoid tracking accruals by advancing the full 40 hours of paid sick leave to new hires.

5. **At the start of a benefit year, an employer may advance paid sick leave to a part-time employee based upon anticipated hours, but must track and award additional time if the employee works additional hours.**

At the beginning of the benefit year, an employer may advance a part-time employee the amount of paid sick leave they would accrue at the rate of one hour of paid sick leave for every 30 hours the employer anticipates the employee will work during the benefit year. Just as is the case with new hires, the employer must track actual hour and award additional paid sick time if the employee works more than the anticipated number of hours.

6. **An employer cannot use an employee's anniversary year as its designated benefit year for paid sick time.**

The FAQs provide that an employer cannot have a different benefit year for each employee based on that employee's anniversary date. Instead, the employer is required to establish a single benefit year for all employees. This will prove problematic for employers currently using an anniversary year for PTO.

7. **An out-of-state employer must provide paid sick leave to employees who perform all work in New Jersey.**

Out-of-state employers with employees in New Jersey must provide paid sick leave to its employees who perform all of their work in the state.

8. **An employee who works both in New Jersey and another state is entitled to sick leave only if employee routinely performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey.**

If the employee routinely performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey, then the employee is entitled to receive paid sick leave under the Act. This is the test applied by the Division on Civil Rights in its enforcement of the New Jersey Family Leave Act. The DOL anticipates adopting the same approach through formal rulemaking.

The same principles apply to a telecommuter who works both from home in New Jersey and for their employer on site in another state. The telecommuter who routinely performs some work in New Jersey is entitled to full paid sick leave coverage under the Act so long as the employee's base of operations or the place from which such work is directed and controlled is in New Jersey. The telecommuter who performs all of their work in New Jersey will always be entitled to full paid sick leave coverage under the Act.

9. **The 120-day waiting period does not restart for reinstated employees.**

If an employee is rehired within six months of separating from an employer, upon rehire the employer shall credit toward the new 120-day waiting period the total number of calendar days worked by the employee prior to the separation.

10. **An employee may use sick leave during overtime that they were required to work but employer is not required to pay sick leave at overtime rate.**

An employer must allow an employee to use paid sick leave for any overtime hours that an employee was scheduled to work. However, employers are not required to pay the overtime rate of pay for sick leave used during overtime.

Conclusion

While there are still some lingering questions about the law, the FAQs have done a good job to clarify certain provisions and address some of the more pressing ambiguities that employers were struggling with. We will keep an eye out for the DOL's final regulations, which are expected sometime in early 2019.

Once released, we will update you on any significant changes to the law and provide practical suggestions for compliance. In the meantime, you should review your policies to ensure compliance prior to October 29.

For more information on how this legislation will affect your workplace, contact any attorney in our New Jersey office 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

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