

GOVERNOR MURPHY SIGNS PAID SICK LEAVE LEGISLATION

On May 2, 2018, Governor Phil Murphy signed into law A-1827/S-2171, the paid sick leave legislation. Governor Murphy made paid sick leave a core issue on his gubernatorial campaign trail. New Jersey is now the 10th state to have such a law on the books and one of the most expansive paid sick leave programs in the nation. It pre-empts all municipal ordinances (currently 13 NJ municipalities have their own ordinances related to paid leave) so that businesses will only have to follow one uniform statewide law.

The law covers all employees, both private and public, except for employees covered by a Collective Bargaining Agreement (CBA) in effect at the time of the effective date of the law (October 29, 2018), but would then apply upon expiration of any CBAs falling within this category.

What Is Covered?

Under the law, an employee may use earned sick leave:

- for diagnosis, care, treatment, or recovery related to the employee's illness;
- to care for a family member during diagnosis, care, treatment or recovery related to a family member's illness;
- for certain absences resulting from the employee or a family member being a victim of domestic or sexual violence;
- for 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, in connection with a public health emergency or a determination that the presence of the employee or child in the community would jeopardize the health of others; or,
- to attend school-related conferences, meetings or events, or to attend other meetings, regarding care for the employee's child.

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.

How Much Time Is Covered?

The law provides that an employee accrues one hour of earned sick leave for every 30 hours worked and requires an employer to pay its employees for earned sick leave at the same rate of pay, and with the same benefits, as the employee normally earns. The employer would not be required to permit the employee to accrue at any one time, or carry forward from one year to the next, more than 40 hours of earned sick leave if the employer has less than 10 employees in the State, or more than 72 hours of earned sick leave if the employer has 10 or more employees. Accrual begins on October 29, 2018 (the effective date of the law) for employees who commenced employment prior to the effective date. If employment commences after the effective date, the accrual of earned sick leave will begin when employment commences. An employee may use the earned sick leave beginning on the 120th day after employment

commences, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

Additional Facts About The New Law

- an employer is permitted to require reasonable documentation if the leave is for three or more consecutive days;
- employers may prohibit employees from using foreseeable earned sick leave on certain dates and require reasonable documentation if employees use sick leave that is not foreseeable during those dates;
- employers shall retain records documenting hours worked by employees and earned sick leave taken by employees, for a period of five years, and shall, upon demand, allow the Department of Labor and Workforce Development access to those records to monitor compliance with the requirements of this act;
- an employer is permitted to offer payment to an employee for unused earned sick leave in the final month of the benefit year. If the employee declines a payment for unused earned sick leave, or agrees to a partial payment, the employee may have the unused leave carried forward to the following year. If the employee accepts the full payment, the employer must make the entire accrual for the following year available to that employee at the beginning of that year;
- retaliatory actions against an employee for the use or requested use of earned sick leave or for filing a complaint for an employer violation of the provisions of this bill are prohibited. This includes “unfavorable assignment,” demotion, and refusal to promote an employee;
- employers with paid time off banks or paid sick leave policies that satisfy requirements of the law are exempt;
- employers can not require employees to work extra time to make up for taking sick time, although employees may voluntarily work extra hours, if available; and,
- per diem health care employees are exempt from the law.