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**MEMORANDUM**

**TO:** PAYROLL CLIENTS  
**FROM:** ROBERT J KLAUSNER  
**SUBJECT:** NJ SICK LEAVE LAW  
**DATE:** OCTOBER 1, 2018  
**CC:**

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As you may know, In May of this year the State of New Jersey passed a paid sick leave law (effective October 29, 2018). Those of you who use a payroll service should check with them to ensure the provisions of this law are being complied with and that you have the supporting documentation to prove compliance. The law specifically states that employers must retain employee records of hours worked and sick leave taken for a period of five years and, upon demand, allow the Department of Labor access to those records.

According to the information that is available at this time, if you already provide your employees with paid time off (paid personal days, vacation days, sick days) it is likely you will be compliant with this new law, however again it is very important that you check with your payroll specialists to ensure compliance.

Here are some notable provisions of the new law:

1) Is every worker entitled to sick pay?

*There are a few categories of workers not covered by the law. Employees in a collective bargaining agreement in the construction industry, per diem health care workers. And public employees provided sick leave pursuant to any other law, rule, or regulation in New Jersey.*

2) 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.*

A more comprehensive article is attached for your reference; however please do not interpret this article as all-encompassing or as a substitute for consulting with your payroll specialist or employment attorney. If you have any questions please do not hesitate to contact our office.

# New Jersey Passes Paid Sick Leave Law

May 4, 2018 – Alerts *Labor & Employment Alert* By Christina A. Stoneburner and Carlos A. Torrejon

A paid sick leave statute has been floating around the New Jersey Legislature for several years, but never gained enough traction to become law ... until now.

New Jersey will become the tenth state to require some form of paid sick leave with its passage of a mandatory **Paid Sick Leave law** applicable to all employers that was signed by Gov. Phil Murphy and is set to take effect on October 29, 2018.

Importantly, the law prohibits towns and cities from enacting ordinances regarding earned sick leave and preempts the previous municipal ordinances in existence prior to the law. Over the past few years, New Jersey local governments have been active on the issue of earned paid sick leave, leading to 13 municipalities to enacting their own laws.

These municipalities are: 1) Bloomfield; 2) East Orange; 3) Elizabeth; 4) Irvington; 5) Jersey City; 6) Montclair; 7) Morristown; 8) Newark; 9) New Brunswick; 10) Passaic; 11) Paterson; 12) Plainfield; and 13) Trenton.

The good news for employers is that the state law preempts all of these local ordinances so employers will need to comply only with the state law.

## **Amount of Leave Available**

Under the law, employees may accrue one hour of paid sick time for every 30 hours worked. Employers, regardless of size, are not required to permit employees to accrue or use more than 40 hours (five days) of earned sick time in any benefit year, and are not required to allow the carry-over of more than 40-hours of earned sick time from one benefit year to the next.

A “benefit year” is a 12 consecutive month period during which an employee may accrue and use earned sick leave.

Unused sick leave must carry-over to the next year unless the employer offers and the employee chooses to accept payment for unused sick time at the end of the year. At

their discretion, employers may provide employees with a full year's complement of sick time immediately on the first day of the benefit year, but again, are not required to permit the accrual or use of more than 40 hours in a benefit year, or the carry-over of more than 40 hours from one benefit year to the next. Employers may also choose to offer employees the ability to payout unused but accrued sick leave in the final month of the employee's benefit year. Afterward, employees must choose within 10 calendar days whether to accept or reject the employers' offer, or alternatively, accept a partial payout (50%) and carry-over the rest, provided employees do not carry-over more than 40 hours. If the employee refuses to accept the payout, then sick leave must carry over in accordance with the Act.

Unless an employee has already accrued sick time prior to the effective date of the law, sick leave begins to accrue on the date the law takes effect for employees hired and working before this date. These employees may use earned sick leave beginning on the 120th calendar day after their employment commences. If hired after the effective date, an employee begins to accrue sick leave upon their employment commencement date and may use earned sick time on the 120th day after the employee begins working.

Notably, an employer will comply with the law if it already offers employees paid time off, including but not limited to personal days, vacation days, or sick days, provided the accrual rate is equal to or greater than that described under the law and employees can use their earned sick time for the same permissible purposes. Further, employees represented by a union may waive their rights and benefits under the law during negotiations of a collective bargaining agreement.

### **Earned sick leave may used for:**

- Diagnosis, care, treatment of, or recovery from, a mental or physical illness, injury or other adverse health conditions, or for preventative medical care of the employee
- Caring for a family member during diagnosis, care, treatment of, or recovery from, a mental or physical illness, injury or other adverse health conditions, or for preventative medical care of the employee's family member
- Absence(s) necessary due to the employee or employee's family member being a victim of domestic or sexual violence, *if the earned sick leave is used for:*
  - medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence
  - services from a designated domestic violence agency or other victim services organization;
  - psychological or other counseling
  - relocation
  - other legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic violence or sexual violence
- Time needed after the closure of the employee's workplace or the school/place of care of the employee's child by order of a public official or other public health

emergency, or if a public health authority issues a determination that the presence of the employee or their family member would jeopardize the health of others

- Attending a school-related function of the employee's child requested or required by the school responsible for the child's education, or attending a meeting concerning the care provided to the child in connection with the child's health conditions or disability

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An employee may not use earned sick leave for any purpose other than those listed above and an employer may discipline an employee who does so.

### **Requiring Employee Notice and Documentation**

If foreseeable, an employer may require an employee provide advance notice prior to using sick leave – not more than seven (7) calendar days – advising of the date their leave is set to begin and the expected duration. If unforeseeable, employees must give notice as soon as practicable.

For sick leave of three or more consecutive days, an employer may require employees provide reasonable documentation that their leave time is for a permitted purpose under the law. The extent of this reasonable documentation and its underlying requirements vary depending on the reason(s) the employee gives for using earned sick leave. Any information received concerning the health, or domestic or sexual violence of an employee or their family member will be treated as confidential and shall not be disclosed, except to the affected employee or with written permission of the employee.

### **Employer Notice and Recordkeeping Requirements**

The Commissioner of the Department of Labor will be developing a notice that employers must post in the workplace. Employers must also give a copy of the notice to employees within 30 days of the notice being drafted and new hires must be given a copy of the notice upon hire. Additionally, an employer must give employees a copy of the notice upon an employee's request.

Employers must retain employee records of hours worked and sick leave taken for a period of five years and, upon demand, allow the Department access to those records.

### **Anti-Retaliation Provisions**

Unsurprisingly, employers may not take retaliatory or discriminatory action in connection with an employee's request or use of earned sick leave. In fact, there is a rebuttable presumption of unlawfulness if an employer takes adverse action against an employee within 90 days of the employee:

- filing a complaint with the Department of Labor and Workforce Development
- informing employees of an employer's violation of the law or the employee's rights under the law;

- cooperating with the Department's or other person's investigation of a possible violation of the law
- opposing any policy, practice or act that is prohibited by the law.

Moving forward, employers should be fully aware of how the law's accrual and use requirements will affect its bottom line. Specifically, as the law applies to all employers notwithstanding its size, even the smallest of businesses with one or two employees, or temporary employees, need to prepare themselves for how the law will affect them. If not, some employers may be in for a surprise once employees begin requesting their state-mandated sick leave.