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## New Jersey Paid Sick Leave Act

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### Introduction

Paid sick leave has arrived in New Jersey. On May 2, 2018, New Jersey Governor Phil Murphy signed into law the New Jersey Paid Sick Leave Act, which took effect October 29, 2018. The Act, which applies to nearly all New Jersey employers and employees, guarantees that almost every person employed in New Jersey will earn paid sick leave. Given its breadth of coverage, recordkeeping and notice requirements, and the potential penalties for breach and noncompliance, employers must prepare for this new legislation. Here are some of the basics:

### Who Is Covered?

The Act applies to any person or entity having employees in the State of New Jersey, regardless of the employer's size. The terms "employer" and "employee" are defined broadly to include all employers and employees, with limited exceptions. This includes temporary help service firms and small businesses.

### How Is Leave Accrued?

Under the Act, employers have two options to calculate leave:

1. An accrual method, under which employees earn sick leave at a rate of one (1) hour per every thirty (30) hours worked; or,

2. An annual "frontloaded" method, in which an employer may provide a "full complement of earned sick leave for a benefit year on the first day of each benefit year."

Under either method, employers are under no obligation to allow an employee to accrue, use or carry forward more than forty (40) hours of earned sick leave. At the end of a benefit year, an employee may carry forward their earned sick time or have it purchased by the employer.

Employers should note, however, that the Act's provisions governing the employer's payment (or buy back) of employee earned sick time versus an employee's carryover of sick time from one benefit year to the next are confusing and depend on which method or process (accrual versus frontloaded) the employer chooses to implement paid sick leave for its employees.

## Notices, Documentation, and Recordkeeping: What is Required?

Employers may require that employees provide up to seven (7) days advance notice of the need to use earned sick leave, where reasonably foreseeable.

Employers may prohibit employees from exercising foreseeable sick leave on certain days or where it "unduly disrupts" the employer's operations.

Employers may require "reasonable documentation" for absences of three (3) or more days. An employer may not demand supporting documentation – or proof – for an employee's use of less than three consecutive days, unless the employee uses earned sick leave on a prohibited date.

Employers must post a notification of employee rights under the Act in a conspicuous place. Employers also must provide written notice to their employees of their rights under the Act, including within thirty days after the New Jersey Department of Labor has issued a model notice, at the time of hiring, and upon request by an employee. Employers also must track their employees' hours worked, earned sick time accrued, and sick time used, and must maintain those records for five (5) years under the Act.

Importantly, employer compliance with these requirements will be subject to audit by the New Jersey Department of Labor and Workforce Development.

## What About PTO?

Employers having existing paid time off (PTO) policies that satisfy the Act's minimum requirements and includes personal days, vacation days, and sick days, will be in compliance with the Act so long as:

- Employees may use paid time off for the reasons enumerated in the Act; and
- The PTO is accrued at a rate equal to or greater than the rate required by the Act.

Employers should review their PTO policies to confirm their compliance.

## How Can Sick Leave Be Used?

Section 3 of the Act includes a list of reasons employees may use earned sick time. The list includes, but is not limited to, the following:

- The medical needs of the employee or the employee's family member(s);
- Absences, treatment, counseling, and other matters relating to or arising from the employee, or the employee's family member, being a victim of domestic or sexual violence;
- Closure of an employee's workplace, school or childcare due to a public health emergency; or,
- Time needed by the employee to attend a school-related conference, meeting, function or other event.

The most important takeaway here for employers is the recognition that the sick leave law is not limited to an employee's use for "sick" leave.

## Must Earned Sick Leave Be Paid at Separation?

Unless otherwise required by company policy, employment contract, or collective bargaining agreement, the Act does not require that unused accrued sick leave be paid to an employee at separation.

## What are the Penalties?

Employers should fear enforcement under the Act. Employers can be prosecuted in different ways and for different reasons. This includes but is not limited to private rights of action by employees for discrimination, retaliation and violations of the Act, and for recordkeeping violations.

An employer that violates the Act will be subject to the penalties and remedies afforded to employees under the New Jersey Wage and Hour Law, which includes monetary damages and attorneys' fees and costs, plus liquidated damages in an amount equal to the unpaid leave.

Furthermore, the Act prohibits an employer from taking discriminatory or retaliatory action against an employee who exercises their rights under the Act. Importantly, the Act creates a rebuttable presumption of retaliation when an employer takes adverse employment action against an employee within ninety (90) days of when that employee engaged in certain protected conduct as provided in Section 4(b) of the Act. Additionally, the protections against retaliation apply to any employee who "mistakenly but in good faith alleges violations of this act."

## How Should Employers Prepare for Paid Sick Leave?

This summary of the Act is merely the tip of the iceberg. Given the potential exposure to liability and other consequences arising from violations and lack of compliance, employers should revisit their employee handbooks and review their employee PTO, attendance, leave, and disciplinary policies.

Employers should reevaluate their recordkeeping requirements to confirm compliance with the Act and should advise their managers and supervisors of the change in the law and train them accordingly. Employers also have several decisions to make, including whether to implement an accrual or annual method of earning sick leave, the applicable benefit year, and the increments in which employee leave may be taken.

Additionally, employers must post the appropriate notice in the workplace and deliver the appropriate disclosures to their employees.

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***Budd Lerner's Labor & Employment attorneys represent a wide range of clients in a variety of industries.***

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