

NEW JERSEY EARNED SICK LEAVE LAW

Governor Murphy signed a major employer mandate, the “earned sick leave” law (A1827), on May 1, 2018.

The New Jersey “earned sick leave” law, which takes effect in six months (October 29th), requires employers to provide earned sick leave to employees in the State. It provides that an employee accrues one hour of earned sick leave for every 30 hours worked and requires an employer to pay for earned sick leave at the same rate of pay, and with the same benefits, as the employee normally earns. The maximum earned leave required is 40 hours a year, which equals **5 days a year** for most full time employees. The employer is not required to permit the employee to accrue or use in any benefit year, or carry forward from one year to the next, more than 40 hours of earned sick leave. **There is no exemption for small businesses and no distinction of full or part time employees, but there is an exemption for per diem health care workers.**

Reasons for Absence

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

1. for diagnosis, care, treatment, or recovery related to the employee’s illness;
2. to care for a family member during diagnosis, care, treatment, or recovery related to a family member’s illness;
3. for certain absences resulting from the employee or a family member being a victim of domestic or sexual violence;
4. 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
5. to attend school-related conferences, meetings, or events, or to attend other meetings regarding care for the employee’s child.

Healthcare Worker Exemption:

Under the new law, “employee” does not include an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement, a **per diem health care employee**, or a public employee who is provided with sick leave with full pay under any other State law.

“Per diem health care employee” means any:

- (1) health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey Department of Health;
- (2) any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; **or**
- (3) any first aid, rescue or ambulance squad member employed by a hospital system.

In addition, the employee must:

- (1) works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;
- (2) works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; **and**
- (3) either:
 - (a) has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under this act under the terms of employment; or
 - (b) has waived earned sick leave benefits as provided under this act under terms of employment for alternative benefits or consideration.

“Per diem health care employee” does not include any individual who is certified as a homemaker-home health aide.

Accrual, Documentation and Use

Accrual pursuant to this law begins on the law's effective date 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.

The law prohibits 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 law. The law permits an employer 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.

Pay Out

The law permits an employer 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.

Supercedes Local Laws

Commencing after the effective date of the law, counties and municipalities are prohibited from adopting new requirements regarding earned sick leave and the provisions of the law preempt existing local requirements.