

New Paid Sick Time Mandates in New York & New Jersey

M&E Labor & Employment Alert

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A new patchwork of local laws in the New York/New Jersey metro area guaranteeing employees paid or unpaid accrued sick time will complicate employers' sick leave policies and practices. New York City, Jersey City and Newark have each enacted mandates for private employers to provide their employees with accrued paid or unpaid sick time on an annual basis starting this year. The new sick leave laws grant rights to time off from work and protection against retaliation, including discipline or discharge, that are in many ways broader than what is required under the federal Family and Medical Leave Act.

In light of these new laws, employers with employees in New York City, Jersey City or Newark should review their existing sick leave policies and make any necessary changes to conform to the new mandates outlined below, particularly as to accrual and carryover requirements, as well as to the use of "sick time" for absences that are not technically related to an employee's illness (e.g., the closing of the workplace or a child's school due to a public health emergency). In addition, employers subject to the new laws must be sure to comply with the requirement to provide written notice to employees of their sick leave rights and display the required posters in conspicuous locations within their workplaces, as well as adhere to the newly created record-keeping requirements to document their compliance with these local laws.

In the coming year, the trend toward mandating the provision of sick time can be expected to continue in other cities and states.

New York City Earned Sick Time Act

In May 2013, the New York City Council passed the Earned Sick Time Act over then-Mayor Bloomberg's veto. It states that "all employees have the right to sick time" and requires all private employers to provide sick time to employees working in New York City (as reported in our July 2013 Client Alert, available [here](#)). In February 2014, before the Act even took effect, the City Council amended and significantly expanded its reach. The amended Act was signed by Mayor de Blasio on March 20, 2014.

- The Act will take effect for most New York City employers on **April 1, 2014**. For those employees covered by a current collective bargaining agreement, the Act will take effect on the date of the CBA's expiration.
- Employers with **5 or more employees** (or at least 1 domestic worker) in New York City must provide accrued paid sick time under the Act. Employers with **fewer than 5 employees**, while not required to provide paid sick time, must provide accrued unpaid sick time to their New York City employees.
- With limited exceptions, any employee who is employed for **more than 80 hours** per year on a full-time, part-time or temporary basis is entitled to accrued sick time.

- Sick time must accrue at a rate of not less than **1 hour for every 30 hours worked**, up to a total of 40 hours for the year (defined as a regular and consecutive 12-month period designated by the employer). An exempt employee is presumed to work a 40-hour week for this purpose, unless his or her regular workweek is less than 40 hours.
- An employee **begins to accrue sick leave at the start of employment** (or April 1, 2014, for current employees) but may not use it until the 120th day thereafter.
- An employee **may use accrued sick time** for absences (1) due to the employee's own illness, medical treatment or preventive care; (2) to care for a family member's illness, treatment or preventive care; or (3) due to the closing of the employee's workplace or a child's school due to a public health emergency declared by city officials. "**Family member**" includes the employee's child, spouse, domestic partner, parent, sibling (including half-sibling, step-sibling and sibling by adoption), grandchild or grandparent, or the child or parent of the employee's spouse or domestic partner.
- Paid sick time must be compensated at not less than **the same regular hourly wage rate** as the employee earns at the time the employee uses such time.
- An **employer may require advance notice** of not more than 1 week when the use of sick time is foreseeable, or notice as soon as practicable when not foreseeable. For an absence of **more than 3 consecutive days**, the employer may require a doctor's note. An employer may require that sick time be used in **increments of not more than 4 hours**.
- An employee shall **carry over unused accrued sick time** into the following year, but the employer need not allow the use by an employee of more than 40 hours of sick time in any year. An employee is **not entitled to be paid for unused accrued sick time** upon termination of employment for any reason.
- An employer that provides its employees with **paid leave, including paid time off (PTO), paid vacation or paid personal days**, sufficient to meet the accrual requirements of the Act, and that allows use of such leave for the same purposes and under the same conditions as required under the Act, is not required to provide additional paid sick time.
- The provisions of the Act may be **expressly waived in a collective bargaining agreement** if the CBA provides for a comparable benefit in the form of paid time off.
- By **May 1, 2014**, all current employees must receive written notice of their right to sick time, including the accrual and use of sick time, the employer's defined year, the right to be free from retaliation, and the right to file a complaint with the New York City Department of Consumer Affairs (DCA). Such notice must also be provided to all new hires. Please click here (link no longer available) to view DCA's model "Notice of Employee Rights."
- Employers must **retain records** of employees' accrual and use of sick time for 3 years.

Jersey City Earned Sick Time Ordinance

On January 24, 2014, Jersey City's Earned Sick Time Ordinance took effect. (For employees covered by a current CBA, the effective date is the CBA's date of termination.) The Jersey City Ordinance is similar in many respects to the New York City Earned Sick Time Act.

- Employers with **10 or more employees** in Jersey City must provide accrued paid sick time under the Act. Employers with **fewer than 10 employees** must provide accrued unpaid sick time to their Jersey City employees.
- As in NYC, with limited exceptions, any employee who is employed for **more than 80 hours** per year on a full-time, part-time or temporary basis in Jersey City is entitled to accrued sick time.
- The rate of accrual under the Jersey City Ordinance is the same as under the New York City Act (**1 hour for every 30 hours worked**, up to a total of 40 hours for the year).
- An employee **begins to accrue sick leave at the start of employment** (or January 24, 2014, for existing employees) but may not use it until the 90th day thereafter.
- An employee may use accrued sick time under the Jersey City Ordinance for the same types of absences as under the New York City Act.

- An employer may require use of accrued sick time in hourly increments or the smallest increment that the employer's payroll system uses for absences or other use of time.
- An employee shall carry over **unused accrued sick time** into the following year, but the employer may cap the carryover at 40 hours and need not allow the use by an employee of more than 40 hours of sick time in any year. An employee is **not entitled to be paid for unused accrued sick time** upon termination of employment for any reason.
- An employer that provides **paid leave, including paid time off (PTO), paid vacation or paid personal days**, sufficient to meet the accrual and use requirements of the Jersey City Ordinance is not required to provide additional paid sick time.
- Employers are required to maintain records for a period of 3 years documenting their compliance with the Jersey City Ordinance.
- By January 24, 2014, employers were required to provide all current employees with **written notice of their right to sick leave**, including the accrual rate, amount and use of sick time; the right to be free from retaliation; and the right to file a complaint with the Jersey City Department of Health and Human Services or bring a civil action if sick time is denied or the employee suffers retaliation for requesting or taking paid sick time. Such notice must also be provided to all new hires. All notices must be given in English, or, if the employee's primary language is other than English, the notice must be given in that language if the Department has made the notice available in that language.
- A **notice of rights poster** must be conspicuously posted in the workplace in English and in any language that is the first language of at least 10% of the employer's workforce if the Department has made posters available in that language.

Newark Paid Sick Leave Ordinance

The City of Newark's Paid Sick Leave Ordinance will take effect on **May 29, 2014** (or, for employees covered by a current CBA, the CBA's date of termination).

- Employers with **10 or more employees** in Newark (whether full-time, part-time or temporary) must provide up to **40 hours of paid sick leave per year** to each employee. Employers with fewer than 10 employees in Newark must provide up to **24 hours of paid sick leave per year** to each employee.
- **Child care, home health care and food service workers** are entitled to accrue up to 40 hours of paid sick leave per year, regardless of the size of the employer's workforce.
- Any employee who works in the city of Newark for **at least 80 hours in a year** is entitled to sick leave under the Newark Ordinance.
- As under the NYC and Jersey City laws, paid sick leave under the Newark Ordinance must accrue at a minimum rate of **1 hour for every 30 hours worked**.
- As in Jersey City, employees begin to accrue sick leave at the start of employment but may not use accrued sick leave until the 90th day of employment.
- An employee may use accrued sick time under the Newark Ordinance for the same types of absences as under the New York City and Jersey City laws.
- A Newark employer may require that accrued sick time be taken in **minimum increments of 1 day**.
- The **carryover** rules are the same as under the Jersey City Ordinance, and an employee is also **not entitled to be paid for unused accrued sick time** upon termination of employment for any reason.
- As under the Jersey City Ordinance, an employer that provides **paid leave, including paid time off (PTO), paid vacation or paid personal days**, sufficient to meet the accrual and use requirements of the Newark Ordinance is not required to provide additional paid sick time.
- By May 29, 2014, all current employees must be provided with **written notice** of their right to paid sick leave; the accrual rate, amount and terms of use of paid sick leave; the right to be free from retaliation; and the right to file a complaint with the Newark Department of Child and Family Well-Being or to bring an action in municipal court for denials of paid sick leave or retaliation for the request or use of paid sick leave. Employers must also provide such notice to all new hires. The

notice must be in English and the primary language spoken by the employee if the language is also the primary language of at least 10% of the employer's workforce.

- A **notice of rights poster** must be posted in a conspicuous and accessible place in the workplace in English and any language that is the first language of at least 10% of the employer's workforce. The Department is authorized to create posters in English and other languages and then make them available to employers. As of the date of this Alert, the Department had not yet made those posters available to the public.
- Employers are required to maintain records for a period of 3 years documenting their compliance with the Newark Ordinance.
- The requirements of the Newark Ordinance may be expressly waived in a collective bargaining agreement.