

Notice Poster for New Jersey's Earned Sick Leave Law Released by Department of Labor for Use Starting on October 29

Related People:
Thomas F. Doherty

Labor & Employment Alert

10.24.2018

The New Jersey Department of Labor and Workforce Development ("NJDOL") has released its notice poster pursuant to the Earned Sick Leave Law, N.J.S.A. 34:11D-1 et seq. (the "Law"), that takes effect on October 29, 2018. This notice, which is available in English and multiple other languages, has to be (i) posted in New Jersey workplaces starting on October 29, (ii) given to all new hires in New Jersey at the time of hire starting on October 29, and (iii) provided to all existing New Jersey employees by November 29.

By way of background, the Law mandates that employers provide earned, i.e., paid, sick leave to their New Jersey employees, with one hour of leave accruing for every 30 hours worked, up to a maximum of 40 hours (five days) per benefit year. A "benefit year" is a 12-month period, to be designated by the employer and identified in the spaces provided in the notice poster, during which an employee shall accrue and use earned sick leave. Once the period is selected, an employer cannot change the benefit year without notifying the NJDOL in accordance with regulations that have not yet been finalized. An employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the Law's effective date (for existing employees) or on the 120th calendar date after the employee commences employment (for people hired after the Law's effective date). An employee can carry over a maximum of 40 hours of earned sick leave to the next benefit year, but an employer is not required to let an employee use more than 40 hours of leave in any benefit year. As an alternative to the carryover of accrued leave time, an employer can offer to pay the employee for accrued but unused sick leave in the final month of the benefit year, at which point the employee has up to 10 calendar days to decide whether to accept the payment or carry forward the accrued time. Unless an employer's policy provides for the payment of accrued sick leave upon termination or separation from employment, an employee is not entitled under the Law to payment for unused earned sick leave upon separating from employment.

Notably, the Law does not contain an exception for small businesses, nor does it exclude temporary or part-time employees from eligibility for paid sick leave. The only employees expressly exempted from the Law are those in the construction industry subject to collective bargaining agreements, per diem health care

employees and public employees who are provided with paid sick leave under another law or regulation.

The Law's use of the term "sick leave" is something of a misnomer inasmuch as an employee can use the accrued leave for the following purposes that are obviously not limited to an employee's own sickness:

- The employee needs time to seek diagnosis, care, or treatment of, or to recover from, his or her mental or physical illness or injury, or for preventive medical care;
- The employee needs time to aid or care for a family member while the family member is being diagnosed or treated for, or recovering from a mental or physical illness or injury, or when the family member is obtaining preventive medical care. Note that "family member" is broadly defined to include the employee's child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent; 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;
- The employee is absent due to circumstances resulting from the employee or his or her family member being a victim of domestic or sexual violence, provided the leave is to allow the employee to obtain for him/herself or the family member: medical attention to recover from physical or psychological injury caused by domestic or sexual violence; services from a designated domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence;
- The employee is unable to work because of a closure of the employee's workplace, or the closure of a school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because a public health authority issued a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or
- The employee needs time to attend a school-related conference, meeting, function, or other event requested or required by his or her child's school administrator or teacher, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.
- Employers that already provide their employees paid time off will be in compliance with the Law, provided that the policies allow for paid absences (whether characterized as personal days, vacation days or sick days) that may be used for the purposes set forth above and that accrue at the same rate or a more favorable rate than described above.

Where the need for earned sick leave is foreseeable, an employer can require up to seven days' advance notice from the employee. Where the need is unforeseeable, an employer can require the employee to provide notice as soon as it is practical to do so.

If an employee uses earned sick leave on three or more consecutive workdays, an employer can request reasonable documentation indicating the need for the leave. The notice poster cautions, however, that an employer cannot require a health care provider to specify the medical reason (e.g., reveal a medical diagnosis) for the employee's leave.

The Law prohibits retaliatory actions against an employee who requests or uses earned sick leave in accordance with the Law or the employer's own sick leave policy; files a complaint with the NJDOL for a violation of the Law; or informs any other person of their rights under the Law. Significantly, the Law creates a rebuttable presumption of unlawful retaliation if an employer takes adverse action against an employee within 90 days of when an employee (i) files a complaint with the NJDOL or a court alleging a violation of the Law; (ii) informs any

person about an employer's alleged violation of the Law; (iii) cooperates with the NJDOL or other persons in the investigation or prosecution of any alleged violation of the Law; (iv) opposes any policy, practice or act that is unlawful under the Law; or (v) informs any person of his or her rights under the Law. Employees will have a private right of action for violations of the Law, and the available remedies include actual damages and liquidated damages equal to the actual damages.

For employers that were already subject to earned sick leave ordinances passed by a number of New Jersey cities and municipalities (such as Jersey City, Newark, Elizabeth, Paterson, Trenton, New Brunswick and Morristown), the Law will preempt those local ordinances, thus providing for uniformity throughout the state on this entitlement.

Employers should prepare to comply with the Law by posting the NJDOL's notice in the workplace and distributing copies of it to existing employees and new hires. It would also be advisable to review existing PTO, vacation or sick leave policies to ensure that they comply with the Law's accrual rate (also making sure not to exclude part-time or temporary employees from eligibility to accrue earned sick leave), carryover requirements, and permissible purposes for using leave time. Finally, managers should be alerted to the Law's prohibition on retaliation and cautioned that employers cannot count an employee's use of earned sick leave for a valid reason as an absence that could otherwise result in discipline, discharge, demotion, suspension, pay cuts or any other adverse action.