

## NJ's Earned Sick Leave Law Will Cost Employers If Violated

By Jeannie O'Sullivan

*Law360 (November 2, 2018, 5:51 PM EDT)* -- New Jersey employers stand to face expensive consequences if they violate the state's new earned sick leave law, which has lesser-known provisions that could render companies noncompliant, Garden State labor lawyers said when the measure went into effect in late October.

Under the broad strokes of the New Jersey Earned Sick Leave Act, signed by Gov. Phil Murphy in May and effective Oct. 29, employers must pay one hour of sick leave for every 30 hours worked, up to 40 hours per year. Employers that violate the law — by withholding pay, making record-keeping gaffes or retaliating against workers who use earned sick leave — are subject to fines of up to \$1,000 and possible criminal charges. Employees have a two-year window to bring civil claims for violations and can win attorneys' fees and costs if they prevail.

New Jersey is the 10th state to implement the law, which entails a host of requirements that the New Jersey Department of Labor and Workforce Development is tasked with enforcing, and is subject to yet-to-be finalized rules that flesh out various provisions. The introduction and passage of the law have kept Garden State employment lawyers busy reviewing their clients' policies or helping them draft new ones.

"There are so many little technical requirements and prohibitions. It can be quite easy for an employer to get tripped up and inadvertently violate the law," said Marissa A. Mastroianni, an associate in Cole Schotz PC's Hackensack office.

First and foremost, employers should know that all employees — full time, part time and seasonal — get the benefit of the law, noted Mastroianni. And an employee who gets terminated but then rehired within six months gets the benefit of all sick leave they'd accrued in their previous stint.

The new law is "a bit of a sea change" for employers that don't currently offer earned sick leave, according to McCarter & English LLP partner Christopher S. Mayer, who is based in the firm's Newark location. Home health care companies, for example, don't typically offer earned sick leave benefits to their aides, Mayer said.

"Now they are specifically required to do so under the law, which will create care and coverage issues if 'live-ins' — who are in homes caring for patients 24/7 — begin to utilize their paid sick leave with little or no advance notice to their employers," Mayer told Law360.

Employers should know that earned sick leave pay extends to nonmedical reasons, such as when an employee must attend a meeting at their child's school. While school meetings aren't related to health, they constitute paid time off that's protected by the law, Mastroianni said.

Employees may also use earned sick leave benefits to care for a family member who is sick, for routine medical care, to address domestic or sexual violence, or to care for a child when schools are closed due to a public health emergency, according to the law.

The relaxation of the notice requirements is another notable provision, attorneys told Law360. Employers cannot ask for more than seven days' notice for a foreseeable event requiring time off under the law. And for unforeseeable time off, employers must settle for notice "as soon as practicable."

"For example, if an employer intends to utilize vacation leave as PTO in order to comply with the 40 hours annual accumulation requirement, if its vacation leave policy currently requires at least two weeks' notice prior to use, that restriction cannot be imposed if an employee needs to use the vacation day for an emergency snow-closing of the employee's child's school," said Sean D. Dias, a partner in Scarinci Hollenbeck LLC's Lyndhurst outpost.

The law does afford employers some flexibility as to how to administer earned sick leave, Mayer noted. They can choose to "front-load" the benefit, meaning employees start off the benefit year with the full 40 hours at their disposal, or dole it out as employees accrue it. Employers likewise have the option to buy out unused sick leave or to carry it over into the next year.

Employers have the benefit of the NJDOL's online "frequently asked questions" guide, which comes highly recommended by both Mayer and Mastroianni. Another critical resource is the NJDOL's list of proposed rules directing how the law should be implemented. The agency is accepting public comment on the proposals through Dec. 14.

The proposed rules may still be pending but, nonetheless, serve as a "best practices" guide on how the NJDOL is implementing the law, said Mastroianni, who advises her clients to revise their policies to reflect the proposals. If not, employers may have to revise their policies once the rules are finalized, warned Mayer.

"They have to stay on top of it," Mayer said.

--Editing by Janice Carter Brown.