

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1827

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED MARCH 12, 2018

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SYNOPSIS

Concerns earned sick leave to employees.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on March 22, 2018, with amendments.

(Sponsorship Updated As Of: 3/14/2018)

1 AN ACT concerning earned sick leave and supplementing P.L.1966,
2 c.113 (C.34:11-56a et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. For the purposes of this act:

8 "Benefit year" means the period of 12 consecutive months
9 established by an employer in which an employee shall accrue and
10 use earned sick leave as provided pursuant to section 2 of this act,
11 provided that once the starting date of the benefit year is established
12 by the employer it shall not be changed unless the employer notifies
13 the commissioner of the change in accordance with regulations
14 promulgated pursuant to this act. The commissioner shall impose a
15 benefit year on any employer that the commissioner determines is
16 changing the benefit year at times or in ways that prevent the
17 accrual or use of earned sick leave by an employee.

18 "Certified Domestic Violence Specialist" means a person who
19 has fulfilled the requirements of certification as a Domestic
20 Violence Specialist established by the New Jersey Association of
21 Domestic Violence Professionals.

22 "Child" means a biological, adopted, or foster child, stepchild or
23 legal ward of an employee, child of a domestic partner or civil
24 union partner of the employee.

25 "Civil union" means a civil union as defined in section 2 of
26 P.L.2006, c.103 (C.37:1-29).

27 "Commissioner" means the Commissioner of Labor and
28 Workforce Development.

29 "Department" means the Department of Labor and Workforce
30 Development.

31 "Designated domestic violence agency" means a county-wide
32 organization with a primary purpose to provide services to victims
33 of domestic violence, and which provides services that conform to
34 the core domestic violence services profile as defined by the
35 Division of Child Protection and Permanency in the Department of
36 Children and Families and is under contract with the division for
37 the express purpose of providing the services.

38 "Domestic or sexual violence" means stalking, any sexually
39 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
40 27.26), or domestic violence as defined in section 3 of P.L.1991,
41 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

42 "Domestic partner" means a domestic partner as defined in
43 section 3 of P.L.2003, c.246 (C.26:8A-3).

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted March 22, 2018.

1 "Employee" means an individual engaged in service to an
2 employer in the business of the employer for compensation.
3 "Employee" does not include an employee performing service in the
4 construction industry that is under contract pursuant to a collective
5 bargaining agreement, or a per diem ¹**[hospital] health care**¹
6 employee ¹, or a public employee who is provided with sick leave
7 with full pay pursuant to any other law, rule, or regulation of this
8 State¹.

9 "Employer" means any person, firm, business, educational
10 institution, nonprofit agency, corporation, limited liability company
11 or other entity that employs employees in the State, including a
12 temporary help service firm. In the case of a temporary help service
13 firm placing an employee with client firms, earned sick leave shall
14 accrue on the basis of the total time worked on assignment with the
15 temporary help service firm, not separately for each client firm to
16 which the employee is assigned. ¹"Employer" does not include a
17 public employer that is required to provide its employees with sick
18 leave with full pay pursuant to any other law, rule or regulation of
19 this State.¹

20 "Family member" means a child, grandchild, sibling, spouse,
21 domestic partner, civil union partner, parent, or grandparent of an
22 employee, or a spouse, domestic partner, or civil union partner of a
23 parent or grandparent of the employee, or a sibling of a spouse,
24 domestic partner, or civil union partner of the employee, or any
25 other individual related by blood to the employee or whose close
26 association with the employee is the equivalent of a family
27 relationship.

28 "Health care professional" means any person licensed under
29 federal, State, or local law, or the laws of a foreign nation, to
30 provide health care services, or any other person who has been
31 authorized to provide health care by a licensed health care
32 professional, including but not limited to doctors, nurses and
33 emergency room personnel.

34 "Parent" means a biological, adoptive, or foster parent,
35 stepparent, or legal guardian of an employee or of the employee's
36 spouse, domestic partner, or civil union partner, or a person who
37 stood in loco parentis of the employee or the employee's spouse,
38 domestic partner, or civil union partner when the employee, spouse
39 or partner was a minor child.

40 "Per diem ¹**[hospital] health care**¹ employee" means any
41 ¹**[individual performing work for a hospital system on an as needed**
42 **basis to replace or substitute for a temporarily absent hospital**
43 **employee, and who works on a flexible or non-fixed schedule]** ;

44 (1) health care professional licensed in the State of New Jersey
45 employed by a health care facility licensed by the New Jersey
46 Department of Health;

1 (2) any individual that is in the process of applying to the New
2 Jersey Division of Consumer Affairs for a license to provide health
3 care services who is employed by a health care facility licensed by
4 the New Jersey Department of Health; or

5 (3) any first aid, rescue or ambulance squad member employed
6 by a hospital system.

7 An employee listed in paragraphs (1), (2), and (3) of this
8 definition shall be considered a per diem health care employee if
9 that employee:

10 (1) works on an as-needed basis to supplement a health care
11 employee, or to replace or substitute for a temporarily absent health
12 care employee;

13 (2) works only when the employee indicates that the employee
14 is available to work, and has no obligation to work when the
15 employee does not indicate availability; and

16 (3) either:

17 (a) has the opportunity for full time or part time employment in
18 their scope of practice under that healthcare provider which offers
19 paid time off benefits greater in length than provided under this act
20 under the terms of employment; or

21 (b) has waived earned sick leave benefits as provided under this
22 act under terms of employment for alternative benefits or
23 consideration.

24 “Per diem health care employee” shall not include any individual
25 who is certified as a homemaker-home health aide¹.

26 “Retaliatory personnel action” means denial of any right
27 guaranteed under this act and any threat, discharge, including a
28 constructive discharge, suspension, demotion, unfavorable
29 reassignment, refusal to promote, disciplinary action, sanction,
30 reduction of work hours, reporting or threatening to report the
31 actual or suspected immigrant status of an employee or the
32 employee’s family, or any other adverse action against an
33 employee.

34 “Sibling” means a biological, foster, or adopted sibling of an
35 employee.

36 "Spouse" means a husband or wife.

37
38 2. a. Each employer shall provide earned sick leave to each
39 employee working for the employer in the State. For every 30 hours
40 worked, the employee shall accrue one hour of earned sick leave,
41 except that an employer may provide an employee with the full
42 complement of earned sick leave for a benefit year, as required
43 under this section, on the first day of each benefit year in
44 accordance with subsection c. or subsection d. of section 3 of this
45 act. The employer shall not be required to permit the employee to
46 accrue or use in any benefit year, or carry forward from one benefit
47 year to the next, more than 40 hours of earned sick leave. Unless
48 the employee has accrued earned sick leave prior to the effective

1 date of this act, the earned sick leave shall begin to accrue on the
2 effective date of this act for any employee who is hired and
3 commences employment before the effective date of this act and the
4 employee shall be eligible to use the earned sick leave beginning on
5 the 120th calendar day after the employee commences employment,
6 and if the employment commences after the effective date of this
7 act, the earned sick leave shall begin to accrue upon the date that
8 employment commences and the employee shall be eligible to use
9 the earned sick leave beginning on the 120th calendar day after the
10 employee commences employment, unless the employer agrees to
11 an earlier date. The employee may subsequently use earned sick
12 leave as soon as it is accrued.

13 b. An employer shall be in compliance with this section if the
14 employer offers paid time off, which is fully paid and shall include,
15 but is not limited to personal days, vacation days, and sick days,
16 and may be used for the purposes of section 3 of this act in the
17 manner provided by this act, and is accrued at a rate equal to or
18 greater than the rate described in this section.

19 c. The employer shall pay the employee for earned sick leave
20 at the same rate of pay with the same benefits as the employee
21 normally earns, except that the pay rate shall not be less than the
22 minimum wage required for the employee pursuant to section 5 of
23 P.L.1966, c.113 (C.34:11-56a4).

24 d. Upon the mutual consent of the employee and employer, an
25 employee may voluntarily choose to work additional hours or shifts
26 during the same or following pay period, in lieu of hours or shifts
27 missed, but shall not be required to work additional hours or shifts
28 or use accrued earned sick leave. An employer may not require, as
29 a condition of an employee's using earned sick leave, that the
30 employee search for or find a replacement worker to cover the
31 hours during which the employee is using earned sick leave.

32 e. If an employee is transferred to a separate division, entity, or
33 location, but remains employed by the same employer, then the
34 employee shall be entitled to all earned sick leave accrued at the
35 prior division, entity, or location, and shall be entitled to use the
36 accrued earned sick leave as provided in this act. If an employee is
37 terminated, laid off, furloughed, or otherwise separated from
38 employment with the employer, any unused accrued earned sick
39 leave shall be reinstated upon the re-hiring or reinstatement of the
40 employee to that employment, within six months of termination,
41 being laid off or furloughed, or separation, and prior employment
42 with the employer shall be counted towards meeting the eligibility
43 requirements set forth in this section. ¹When a different employer
44 succeeds or takes the place of an existing employer, all employees
45 of the original employer who remain employed by the successor
46 employer are entitled to all of the earned sick leave they accrued
47 when employed by the original employer, and are entitled to use the
48 earned sick leave previously accrued immediately.¹

1 f. An employer may choose the increments in which its
2 employees may use earned sick leave, provided that the largest
3 increment of earned sick leave that an employee may be required to
4 use for each shift for which earned sick leave is used shall be the
5 number of hours the employee was scheduled to work during that
6 shift.

7

8 3. a. An employer shall permit an employee to use the earned
9 sick leave accrued pursuant to this act for any of the following:

10 (1) time needed for diagnosis, care, or treatment of, or recovery
11 from, an employee's mental or physical illness, injury or other
12 adverse health condition, or for preventive medical care for the
13 employee;

14 (2) time needed for the employee to aid or care for a family
15 member of the employee during diagnosis, care, or treatment of, or
16 recovery from, the family member's mental or physical illness,
17 injury or other adverse health condition, or during preventive
18 medical care for the family member;

19 (3) absence necessary due to circumstances resulting from the
20 employee, or a family member of the employee, being a victim of
21 domestic or sexual violence, if the leave is to allow the employee to
22 obtain for the employee or the family member: medical attention
23 needed to recover from physical or psychological injury or
24 disability caused by domestic or sexual violence; services from a
25 designated domestic violence agency or other victim services
26 organization; psychological or other counseling; relocation; or legal
27 services, including obtaining a restraining order or preparing for, or
28 participating in, any civil or criminal legal proceeding related to the
29 domestic or sexual violence;

30 (4) time during which the employee is not able to work because
31 of a closure of the employee's workplace, or the school or place of
32 care of a child of the employee, by order of a public official due to
33 an epidemic or other public health emergency, or because of the
34 issuance by a public health authority of a determination that the
35 presence in the community of the employee, or a member of the
36 employee's family in need of care by the employee, would
37 jeopardize the health of others; or

38 (5) time needed by the employee in connection with a child of
39 the employee to attend a school-related conference, meeting,
40 function or other event requested or required by a school
41 administrator, teacher, or other professional staff member
42 responsible for the child's education, or to attend a meeting
43 regarding care provided to the child in connection with the child's
44 health conditions or disability.

45 b. If an employee's need to use earned sick leave is foreseeable,
46 an employer may require advance notice, not to exceed seven
47 calendar days prior to the date the leave is to begin, of the intention
48 to use the leave and its expected duration, and shall make a

1 reasonable effort to schedule the use of earned sick leave in a
2 manner that does not unduly disrupt the operations of the employer.
3 If the reason for the leave is not foreseeable, an employer may
4 require an employee to give notice of the intention as soon as
5 practicable, if the employer has notified the employee of this
6 requirement. Employers may prohibit employees from using
7 foreseeable earned sick leave ¹【from being used】¹ on certain dates,
8 and require reasonable documentation if sick leave that is not
9 foreseeable is used during those dates. For earned sick leave of
10 three or more consecutive days, an employer may require
11 reasonable documentation that the leave is being taken for the
12 purpose permitted under subsection a. of this section. If the leave is
13 permitted under paragraph (1) or (2) of subsection a. of this section,
14 documentation signed by a health care professional who is treating
15 the employee or the family member of the employee indicating the
16 need for the leave and, if possible, number of days of leave, shall be
17 considered reasonable documentation. If the leave is permitted
18 under paragraph (3) of subsection a. of this section because of
19 domestic or sexual violence, any of the following shall be
20 considered reasonable documentation of the domestic or sexual
21 violence: medical documentation; a law enforcement agency record
22 or report; a court order; documentation that the perpetrator of the
23 domestic or sexual violence has been convicted of a domestic or
24 sexual violence offense; certification from a certified Domestic
25 Violence Specialist or a representative of a designated domestic
26 violence agency or other victim services organization; or other
27 documentation or certification provided by a social worker,
28 counselor, member of the clergy, shelter worker, health care
29 professional, attorney, or other professional who has assisted the
30 employee or family member in dealing with the domestic or sexual
31 violence. If the leave is permitted under paragraph (4) of
32 subsection a. of this section, a copy of the order of the public
33 official or the determination by the health authority shall be
34 considered reasonable documentation.

35 c. Nothing in this act shall be deemed to require an employer to
36 provide earned sick leave for an employee's leave for purposes
37 other than those identified in this section, or prohibit the employer
38 from taking disciplinary action against an employee who uses
39 earned sick leave for purposes other than those identified in this
40 section. An employer may provide an offer to an employee for a
41 payment of unused earned sick leave in the final month of the
42 employer's benefit year. The employee shall choose, no later than
43 10 calendar days from the date of the employer's offer, whether to
44 accept a payment or decline a payment. If the employee agrees to
45 receive a payment, the employee shall choose a payment for the full
46 amount of unused earned sick leave or for 50 percent of the amount
47 of unused earned sick leave. The payment amount shall be based on
48 the same rate of pay that the employee earns at the time of the

1 payment. If the employee declines a payment for unused earned
2 sick leave, or agrees to a payment for 50 percent of the amount of
3 unused sick leave, the employee shall be entitled to carry forward
4 any unused or unpaid earned sick leave to the proceeding benefit
5 year as provided pursuant to subsection a. of section 2 of this act. If
6 the employee agrees to a payment for the full amount of unused
7 earned sick leave, the employee shall not be entitled to carry
8 forward any earned sick leave to the proceeding benefit year
9 pursuant to subsection a. of section 2 of this act.

10 d. If an employer foregoes the accrual process for earned sick
11 leave hours pursuant to subsection a. of section 2 of this act and
12 provides an employee with the full complement of earned sick leave
13 for a benefit year on the first day of each benefit year, then the
14 employer shall either provide to the employee a payment for the full
15 amount of unused earned sick leave in the final month of the
16 employer's benefit year or carry forward any unused sick leave to
17 the next benefit year. The employer may pay the employee the full
18 amount of unused earned sick leave in the final month of a benefit
19 year pursuant to this subsection only if the employer forgoes, with
20 respect to that employee, the accrual process for earned sick leave
21 during the next benefit year. Unless an employer policy or
22 collective bargaining agreement provides for the payment of
23 accrued earned sick leave upon termination, resignation, retirement
24 or other separation from employment, an employee shall not be
25 entitled under this section to payment of unused earned sick leave
26 upon the separation from employment.

27 e. Any information an employer possesses regarding the health
28 of an employee or any family member of the employee or domestic
29 or sexual violence affecting an employee or employee's family
30 member shall be treated as confidential and not disclosed except to
31 the affected employee or with the written permission of the affected
32 employee.

33
34 4. a. No employer shall take retaliatory personnel action or
35 discriminate against an employee because the employee requests or
36 uses earned sick leave either in accordance with this act or the
37 employer's own earned sick leave policy, as the case may be, or
38 files a complaint with the commissioner alleging the employer's
39 violation of any provision of this act, or informs any other person of
40 their rights under this act. No employer shall count earned sick
41 leave taken under this act as an absence that may result in the
42 employee being subject to discipline, discharge, demotion,
43 suspension, a loss or reduction of pay, or any other adverse action.

44 b. There shall be a rebuttable presumption of an unlawful
45 retaliatory personnel action under this section whenever an
46 employer takes adverse action against an employee within 90 days
47 of when that employee: files a complaint with the department or a
48 court alleging a violation of any provision of this section; informs

1 any person about an employer's alleged violation of this section;
2 cooperates with the department or other persons in the investigation
3 or prosecution of any alleged violation of this section; opposes any
4 policy, practice, or act that is unlawful under this section; or
5 informs any person of his or her rights under this section.

6 c. Protections of this section shall apply to any person who
7 mistakenly but in good faith alleges violations of this act.

8 d. Any violator of the provisions of this section shall be subject
9 to relevant penalties and remedies provided by the "New Jersey
10 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.),
11 including the penalties and remedies provided by section 25 of that
12 act (C.34:11-56a24), and relevant penalties and remedies provided
13 by section 10 of P.L.1999, c.90 (C.2C:40A-2), for discharge or
14 other discrimination.

15
16 5. Any failure of an employer to make available or pay earned
17 sick leave as required by this act, or any other violation of this act,
18 shall be regarded as a failure to meet the wage payment
19 requirements of the "New Jersey State Wage and Hour Law,"
20 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
21 as the case may be, and remedies, penalties, and other measures
22 provided by that act, R.S.34:11-58, and section 10 of P.L.1999, c.90
23 (C.2C:40A-2) for failure to pay wages or other violations of that act
24 shall be applicable, including, but not limited to, penalties provided
25 pursuant to sections 23 and 25 of that act (C.34:11-56a22 and
26 34:11-56a24), and civil actions by employees pursuant to section 26
27 of that act (C.34:11-56a25), except that an award to an employee in
28 a civil act shall include, in addition to the amount provided pursuant
29 to section 26 of that act (C.34:11-56a25), any actual damages
30 suffered by the employee as the result of the violation plus an equal
31 amount of liquidated damages.

32
33 6. Employers shall retain records documenting hours worked
34 by employees and earned sick leave taken by employees, for a
35 period of five years, and shall, upon demand, allow the department
36 access to those records to monitor compliance with the
37 requirements of this act. If an employee makes a claim that the
38 employer has failed to provide earned sick leave required by this act
39 and the employer has not maintained or retained adequate records
40 documenting hours worked by the employee and earned sick leave
41 taken by the employee or does not allow the department access to
42 the records, it shall be presumed that the employer has failed to
43 provide the earned sick leave, absent clear and convincing evidence
44 otherwise. In addition, the penalties provided by the "New Jersey
45 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.)
46 for violations of the requirements of that act regarding the
47 maintaining and disclosure of records shall apply to violations of
48 the requirements of this section.

1 7. a. Employers shall provide notification, in a form issued by
2 the commissioner, to employees of their rights under this act,
3 including the amount of earned sick leave to which they are entitled
4 and the terms of its use, and remedies provided by this act to
5 employees if an employer fails to provide the required benefits or
6 retaliates against employees exercising their rights under this act.
7 Each covered employer shall conspicuously post the notification in
8 a place or places accessible to all employees in each of the
9 employer's workplaces. The employer shall also provide each
10 employee employed by the employer with a written copy of the
11 notification: not later than 30 days after the form of the notification
12 is issued; at the time of the employee's hiring, if the employee is
13 hired after the issuance; and at any time, when first requested by the
14 employee. The commissioner shall make the notifications available
15 in English, in Spanish, and any other language that the
16 commissioner determines is the first language of a significant
17 number of workers in the State and the employer shall use the
18 notification in English, Spanish or any other language for which the
19 commissioner has provided notifications and which is the first
20 language of a majority of the employer's workforce.

21 b. The commissioner shall advise any employee who files a
22 complaint pursuant to this section and is covered by a collective
23 bargaining agreement, that if the agreement provides for earned sick
24 leave, the employee may have a right to pursue a grievance under
25 the terms of the agreement.

26

27 8. a. The governing body of a county or municipality shall not,
28 after the effective date of this act, adopt any ordinance, resolution,
29 law, rule, or regulation regarding earned sick leave. The provisions
30 of this act shall preempt any ordinance, resolution, law, rule, or
31 regulation regarding earned sick leave adopted by the governing
32 body of a county or municipality.

33 b. No provision of this act, or any regulations promulgated to
34 implement or enforce this act, shall be construed as:

35 (1) requiring an employer to reduce, or justifying an employer
36 in reducing, rights or benefits provided by the employer pursuant to
37 an employer policy or collective bargaining agreement which are
38 more favorable to employees than those required by this act or
39 which provide rights or benefits to employees not covered by this
40 act;

41 (2) preventing or prohibiting the employer from agreeing,
42 through a collective bargaining agreement or employer policy, to
43 provide rights or benefits which are more favorable to employees
44 than those required by this act or to provide rights or benefits to
45 employees not covered by this act;

46 (3) prohibiting an employer from establishing a policy whereby
47 an employee may donate unused accrued earned sick leave to
48 another employee or other employees; or

1 (4) superseding any law providing collective bargaining rights
2 for employees, or in any way reducing, diminishing, or adversely
3 affecting those collective bargaining rights, or in any way reducing,
4 diminishing, or affecting the obligations of employers under those
5 laws.

6 Employees ¹or employee representatives¹ may waive the rights
7 or benefits provided under this act during the negotiation of a
8 collective bargaining agreement.

9 c. With respect to employees covered by a collective
10 bargaining agreement in effect at the time of the effective date of
11 this act, no provision of this act shall apply until the stated
12 expiration of the collective bargaining agreement.

13 ¹[d. This act shall not be construed to preempt, limit, or
14 otherwise affect the applicability of any provision of any State law
15 or regulation regarding earned sick leave for employees of public
16 employers that provides rights or benefits to employees which
17 provide a greater length of earned sick leave to employees than
18 those required by this act, but shall supersede any provision of any
19 State law or regulation which provides a lesser length of earned sick
20 leave to the employees than what is required by this act,
21 notwithstanding the provisions of those other laws or regulations.]¹

22

23 9. The provisions of this act shall be deemed to be severable
24 and if any section, subsection, paragraph, sentence or other part of
25 this act is declared to be unconstitutional, or the applicability
26 thereof to any person is held invalid, the remainder of this act shall
27 not thereby be deemed to be unconstitutional or invalid.

28

29 10. The commissioner shall develop and implement a
30 multilingual outreach program to inform employees, parents, and
31 persons under the care of health care providers about the
32 availability of earned paid sick leave pursuant to this act. The
33 program shall include the distribution of written materials in
34 English, Spanish and any language that is the primary language of
35 10 percent or more of the registered voters in the State to all child
36 care and elder care providers, domestic violence shelters, schools,
37 hospitals, community health centers and other healthcare providers.
38 The commissioner shall, during each calendar year, allocate not less
39 than \$500,000 to the program, which shall be regarded as a cost of
40 administration of temporary disability and family temporary
41 disability benefits and be charged to the administration account of
42 State disability benefit fund, except that the allocation made
43 pursuant to this subsection shall not result in the total amount
44 credited to administrative costs exceeding the maximum amount
45 permitted pursuant to subsection (a) of section 22 of P.L.1948,
46 c.110 (C.43:21-46).

1 11. The commissioner shall adopt rules and regulations
2 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

4

5 12. This act shall take effect on the 180th day next following
6 enactment.