

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2171

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED MARCH 26, 2018

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senator Greenstein

SYNOPSIS

Concerns earned sick leave to employees.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Labor Committee.



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).

44 “Employee” means an individual engaged in service to an
45 employer in the business of the employer for compensation.
46 “Employee” does not include an employee performing service in the
47 construction industry that is under contract pursuant to a collective
48 bargaining agreement, or a per diem health care employee, or a

1 public employee who is provided with sick leave with full pay
2 pursuant to any other law, rule, or regulation of this State.

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

14 “Family member” means a child, grandchild, sibling, spouse,
15 domestic partner, civil union partner, parent, or grandparent of an
16 employee, or a spouse, domestic partner, or civil union partner of a
17 parent or grandparent of the employee, or a sibling of a spouse,
18 domestic partner, or civil union partner of the employee, or any
19 other individual related by blood to the employee or whose close
20 association with the employee is the equivalent of a family
21 relationship.

22 “Health care professional” means any person licensed under
23 federal, State, or local law, or the laws of a foreign nation, to
24 provide health care services, or any other person who has been
25 authorized to provide health care by a licensed health care
26 professional, including but not limited to doctors, nurses and
27 emergency room personnel.

28 “Parent” means a biological, adoptive, or foster parent,
29 stepparent, or legal guardian of an employee or of the employee’s
30 spouse, domestic partner, or civil union partner, or a person who
31 stood in loco parentis of the employee or the employee’s spouse,
32 domestic partner, or civil union partner when the employee, spouse
33 or partner was a minor child.

34 “Per diem health care employee” means any:

35 (1) health care professional licensed in the State of New Jersey
36 employed by a health care facility licensed by the New Jersey
37 Department of Health;

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

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

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

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

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

7 (3) either:

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

12 (b) has waived earned sick leave benefits as provided under this
13 act under terms of employment for alternative benefits or
14 consideration.

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

17 “Retaliatory personnel action” means denial of any right
18 guaranteed under this act and any threat, discharge, including a
19 constructive discharge, suspension, demotion, unfavorable
20 reassignment, refusal to promote, disciplinary action, sanction,
21 reduction of work hours, reporting or threatening to report the
22 actual or suspected immigrant status of an employee or the
23 employee’s family, or any other adverse action against an
24 employee.

25 “Sibling” means a biological, foster, or adopted sibling of an
26 employee.

27 “Spouse” means a husband or wife.

28

29 2. a. Each employer shall provide earned sick leave to each
30 employee working for the employer in the State. For every 30 hours
31 worked, the employee shall accrue one hour of earned sick leave,
32 except that an employer may provide an employee with the full
33 complement of earned sick leave for a benefit year, as required
34 under this section, on the first day of each benefit year in
35 accordance with subsection c. or subsection d. of section 3 of this
36 act. The employer shall not be required to permit the employee to
37 accrue or use in any benefit year, or carry forward from one benefit
38 year to the next, more than 40 hours of earned sick leave. Unless
39 the employee has accrued earned sick leave prior to the effective
40 date of this act, the earned sick leave shall begin to accrue on the
41 effective date of this act for any employee who is hired and
42 commences employment before the effective date of this act and the
43 employee shall be eligible to use the earned sick leave beginning on
44 the 120th calendar day after the employee commences employment,
45 and if the employment commences after the effective date of this
46 act, the earned sick leave shall begin to accrue upon the date that
47 employment commences and the employee shall be eligible to use
48 the earned sick leave beginning on the 120th calendar day after the

1 employee commences employment, unless the employer agrees to
2 an earlier date. The employee may subsequently use earned sick
3 leave as soon as it is accrued.

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

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

15 d. Upon the mutual consent of the employee and employer, an
16 employee may voluntarily choose to work additional hours or shifts
17 during the same or following pay period, in lieu of hours or shifts
18 missed, but shall not be required to work additional hours or shifts
19 or use accrued earned sick leave. An employer may not require, as
20 a condition of an employee's using earned sick leave, that the
21 employee search for or find a replacement worker to cover the
22 hours during which the employee is using earned sick leave.

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

40 f. An employer may choose the increments in which its
41 employees may use earned sick leave, provided that the largest
42 increment of earned sick leave that an employee may be required to
43 use for each shift for which earned sick leave is used shall be the
44 number of hours the employee was scheduled to work during that
45 shift.

46
47 3. a. An employer shall permit an employee to use the earned
48 sick leave accrued pursuant to this act for any of the following:

- 1 (1) time needed for diagnosis, care, or treatment of, or recovery
2 from, an employee's mental or physical illness, injury or other
3 adverse health condition, or for preventive medical care for the
4 employee;
 - 5 (2) time needed for the employee to aid or care for a family
6 member of the employee during diagnosis, care, or treatment of, or
7 recovery from, the family member's mental or physical illness,
8 injury or other adverse health condition, or during preventive
9 medical care for the family member;
 - 10 (3) absence necessary due to circumstances resulting from the
11 employee, or a family member of the employee, being a victim of
12 domestic or sexual violence, if the leave is to allow the employee to
13 obtain for the employee or the family member: medical attention
14 needed to recover from physical or psychological injury or
15 disability caused by domestic or sexual violence; services from a
16 designated domestic violence agency or other victim services
17 organization; psychological or other counseling; relocation; or legal
18 services, including obtaining a restraining order or preparing for, or
19 participating in, any civil or criminal legal proceeding related to the
20 domestic or sexual violence;
 - 21 (4) time during which the employee is not able to work because
22 of a closure of the employee's workplace, or the school or place of
23 care of a child of the employee, by order of a public official due to
24 an epidemic or other public health emergency, or because of the
25 issuance by a public health authority of a determination that the
26 presence in the community of the employee, or a member of the
27 employee's family in need of care by the employee, would
28 jeopardize the health of others; or
 - 29 (5) time needed by the employee in connection with a child of
30 the employee to attend a school-related conference, meeting,
31 function or other event requested or required by a school
32 administrator, teacher, or other professional staff member
33 responsible for the child's education, or to attend a meeting
34 regarding care provided to the child in connection with the child's
35 health conditions or disability.
- 36 b. If an employee's need to use earned sick leave is foreseeable,
37 an employer may require advance notice, not to exceed seven
38 calendar days prior to the date the leave is to begin, of the intention
39 to use the leave and its expected duration, and shall make a
40 reasonable effort to schedule the use of earned sick leave in a
41 manner that does not unduly disrupt the operations of the employer.
42 If the reason for the leave is not foreseeable, an employer may
43 require an employee to give notice of the intention as soon as
44 practicable, if the employer has notified the employee of this
45 requirement. Employers may prohibit employees from using
46 foreseeable earned sick leave on certain dates, and require
47 reasonable documentation if sick leave that is not foreseeable is
48 used during those dates. For earned sick leave of three or more

1 consecutive days, an employer may require reasonable
2 documentation that the leave is being taken for the purpose
3 permitted under subsection a. of this section. If the leave is
4 permitted under paragraph (1) or (2) of subsection a. of this section,
5 documentation signed by a health care professional who is treating
6 the employee or the family member of the employee indicating the
7 need for the leave and, if possible, number of days of leave, shall be
8 considered reasonable documentation. If the leave is permitted
9 under paragraph (3) of subsection a. of this section because of
10 domestic or sexual violence, any of the following shall be
11 considered reasonable documentation of the domestic or sexual
12 violence: medical documentation; a law enforcement agency record
13 or report; a court order; documentation that the perpetrator of the
14 domestic or sexual violence has been convicted of a domestic or
15 sexual violence offense; certification from a certified Domestic
16 Violence Specialist or a representative of a designated domestic
17 violence agency or other victim services organization; or other
18 documentation or certification provided by a social worker,
19 counselor, member of the clergy, shelter worker, health care
20 professional, attorney, or other professional who has assisted the
21 employee or family member in dealing with the domestic or sexual
22 violence. If the leave is permitted under paragraph (4) of
23 subsection a. of this section, a copy of the order of the public
24 official or the determination by the health authority shall be
25 considered reasonable documentation.

26 c. Nothing in this act shall be deemed to require an employer to
27 provide earned sick leave for an employee's leave for purposes
28 other than those identified in this section, or prohibit the employer
29 from taking disciplinary action against an employee who uses
30 earned sick leave for purposes other than those identified in this
31 section. An employer may provide an offer to an employee for a
32 payment of unused earned sick leave in the final month of the
33 employer's benefit year. The employee shall choose, no later than
34 10 calendar days from the date of the employer's offer, whether to
35 accept a payment or decline a payment. If the employee agrees to
36 receive a payment, the employee shall choose a payment for the full
37 amount of unused earned sick leave or for 50 percent of the amount
38 of unused earned sick leave. The payment amount shall be based on
39 the same rate of pay that the employee earns at the time of the
40 payment. If the employee declines a payment for unused earned
41 sick leave, or agrees to a payment for 50 percent of the amount of
42 unused sick leave, the employee shall be entitled to carry forward
43 any unused or unpaid earned sick leave to the proceeding benefit
44 year as provided pursuant to subsection a. of section 2 of this act. If
45 the employee agrees to a payment for the full amount of unused
46 earned sick leave, the employee shall not be entitled to carry
47 forward any earned sick leave to the proceeding benefit year
48 pursuant to subsection a. of section 2 of this act.

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

18 e. Any information an employer possesses regarding the health
19 of an employee or any family member of the employee or domestic
20 or sexual violence affecting an employee or employee's family
21 member shall be treated as confidential and not disclosed except to
22 the affected employee or with the written permission of the affected
23 employee.
24

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

35 b. There shall be a rebuttable presumption of an unlawful
36 retaliatory personnel action under this section whenever an
37 employer takes adverse action against an employee within 90 days
38 of when that employee: files a complaint with the department or a
39 court alleging a violation of any provision of this section; informs
40 any person about an employer's alleged violation of this section;
41 cooperates with the department or other persons in the investigation
42 or prosecution of any alleged violation of this section; opposes any
43 policy, practice, or act that is unlawful under this section; or
44 informs any person of his or her rights under this section.

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

47 d. Any violator of the provisions of this section shall be subject
48 to relevant penalties and remedies provided by the "New Jersey

1 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.),
2 including the penalties and remedies provided by section 25 of that
3 act (C.34:11-56a24), and relevant penalties and remedies provided
4 by section 10 of P.L.1999, c.90 (C.2C:40A-2), for discharge or
5 other discrimination.

6
7 5. Any failure of an employer to make available or pay earned
8 sick leave as required by this act, or any other violation of this act,
9 shall be regarded as a failure to meet the wage payment
10 requirements of the “New Jersey State Wage and Hour Law,”
11 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
12 as the case may be, and remedies, penalties, and other measures
13 provided by that act, R.S.34:11-58, and section 10 of P.L.1999, c.90
14 (C.2C:40A-2) for failure to pay wages or other violations of that act
15 shall be applicable, including, but not limited to, penalties provided
16 pursuant to sections 23 and 25 of that act (C.34:11-56a22 and
17 34:11-56a24), and civil actions by employees pursuant to section 26
18 of that act (C.34:11-56a25), except that an award to an employee in
19 a civil act shall include, in addition to the amount provided pursuant
20 to section 26 of that act (C.34:11-56a25), any actual damages
21 suffered by the employee as the result of the violation plus an equal
22 amount of liquidated damages.

23
24 6. Employers shall retain records documenting hours worked
25 by employees and earned sick leave taken by employees, for a
26 period of five years, and shall, upon demand, allow the department
27 access to those records to monitor compliance with the
28 requirements of this act. If an employee makes a claim that the
29 employer has failed to provide earned sick leave required by this act
30 and the employer has not maintained or retained adequate records
31 documenting hours worked by the employee and earned sick leave
32 taken by the employee or does not allow the department access to
33 the records, it shall be presumed that the employer has failed to
34 provide the earned sick leave, absent clear and convincing evidence
35 otherwise. In addition, the penalties provided by the “New Jersey
36 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)
37 for violations of the requirements of that act regarding the
38 maintaining and disclosure of records shall apply to violations of
39 the requirements of this section.

40
41 7. a. Employers shall provide notification, in a form issued by
42 the commissioner, to employees of their rights under this act,
43 including the amount of earned sick leave to which they are entitled
44 and the terms of its use, and remedies provided by this act to
45 employees if an employer fails to provide the required benefits or
46 retaliates against employees exercising their rights under this act.
47 Each covered employer shall conspicuously post the notification in
48 a place or places accessible to all employees in each of the

1 employer's workplaces. The employer shall also provide each
2 employee employed by the employer with a written copy of the
3 notification: not later than 30 days after the form of the notification
4 is issued; at the time of the employee's hiring, if the employee is
5 hired after the issuance; and at any time, when first requested by the
6 employee. The commissioner shall make the notifications available
7 in English, in Spanish, and any other language that the
8 commissioner determines is the first language of a significant
9 number of workers in the State and the employer shall use the
10 notification in English, Spanish or any other language for which the
11 commissioner has provided notifications and which is the first
12 language of a majority of the employer's workforce.

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

18

19 8. a. The governing body of a county or municipality shall
20 not, after the effective date of this act, adopt any ordinance,
21 resolution, law, rule, or regulation regarding earned sick leave. The
22 provisions of this act shall preempt any ordinance, resolution, law,
23 rule, or regulation regarding earned sick leave adopted by the
24 governing body of a county or municipality.

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

27 (1) requiring an employer to reduce, or justifying an employer
28 in reducing, rights or benefits provided by the employer pursuant to
29 an employer policy or collective bargaining agreement which are
30 more favorable to employees than those required by this act or
31 which provide rights or benefits to employees not covered by this
32 act;

33 (2) preventing or prohibiting the employer from agreeing,
34 through a collective bargaining agreement or employer policy, to
35 provide rights or benefits which are more favorable to employees
36 than those required by this act or to provide rights or benefits to
37 employees not covered by this act;

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

41 (4) superseding any law providing collective bargaining rights
42 for employees, or in any way reducing, diminishing, or adversely
43 affecting those collective bargaining rights, or in any way reducing,
44 diminishing, or affecting the obligations of employers under those
45 laws.

46 Employees or employee representatives may waive the rights or
47 benefits provided under this act during the negotiation of a
48 collective bargaining agreement.

1 c. With respect to employees covered by a collective
2 bargaining agreement in effect at the time of the effective date of
3 this act, no provision of this act shall apply until the stated
4 expiration of the collective bargaining agreement.

5
6 9. The provisions of this act shall be deemed to be severable
7 and if any section, subsection, paragraph, sentence or other part of
8 this act is declared to be unconstitutional, or the applicability
9 thereof to any person is held invalid, the remainder of this act shall
10 not thereby be deemed to be unconstitutional or invalid.

11
12 10. The commissioner shall develop and implement a
13 multilingual outreach program to inform employees, parents, and
14 persons under the care of health care providers about the
15 availability of earned paid sick leave pursuant to this act. The
16 program shall include the distribution of written materials in
17 English, Spanish and any language that is the primary language of
18 10 percent or more of the registered voters in the State to all child
19 care and elder care providers, domestic violence shelters, schools,
20 hospitals, community health centers and other healthcare providers.
21 The commissioner shall, during each calendar year, allocate not less
22 than \$500,000 to the program, which shall be regarded as a cost of
23 administration of temporary disability and family temporary
24 disability benefits and be charged to the administration account of
25 State disability benefit fund, except that the allocation made
26 pursuant to this subsection shall not result in the total amount
27 credited to administrative costs exceeding the maximum amount
28 permitted pursuant to subsection (a) of section 22 of P.L.1948,
29 c.110 (C.43:21-46).

30
31 11. The commissioner shall adopt rules and regulations
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
33 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

34
35 12. This act shall take effect on the 180th day next following
36 enactment.