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As the Fraternity of States With Earned Sick Leave Adds a New Chapter, New Jersey Employers Can Expect Big Changes

Getting Sick of Paid Sick Leave Yet?

While New Jersey employers have long avoided a statewide sick leave law, in recent years many have struggled to keep up with an ever expanding patchwork of municipal paid sick leave laws (such as laws in Morristown, Newark, Jersey City and Trenton). On May 2, however, Governor Phil Murphy signed into law New Jersey's first statewide earned sick leave law. The New Jersey Paid Sick Leave Act preempts the municipal laws, providing a measure of clarity to employers. However, it provides that clarity at the expense of onerous new obligations on all New Jersey employers, regardless of size. Employees can accrue and use up to 40 hours of earned sick time each year. Employers also must contend with the Act's strong anti-retaliation provisions, record keeping requirements, and other challenging nuances.

In passing the Act, New Jersey now joins a growing list of jurisdictions across the country, including Connecticut (since 2012), Massachusetts (since 2015), and New York City (since 2014), with mandatory paid sick leave laws. Conceptually, these laws require employers to provide a limited amount of paid leave to employees to use for various iterations of "sick leave"; however, each law has its own unique attributes. For example:

- "Service workers" in Connecticut accrue one hour of paid sick leave for every 40 hours of work they perform. Employees can use the leave for their own illness, to care for the illness of a spouse or child, or for preventative medical care. Employees can also use leave if required for certain absences associated with domestic violence or sexual assault.
- In New York City, employers with five or more employees must provide earned sick leave to their employees, who can accrue one hour of paid sick leave for every 30 hours worked. Employees can use leave for illness, as well as instances of closures due to a public health emergency and, recently, absences associated with domestic violence.
- Substantially all Massachusetts employers must provide earned sick time to employees working in Massachusetts. If an employer has 11 or more employees, the sick time must be paid; otherwise, it may be unpaid. Employees accrue earned sick leave at a rate of one hour for every 30 hours of work, and can use it to care for their own or a family member's illness, and for absences related to domestic violence.

Now, It Is Time to Get Ready in the Garden State

Effective October 29, 2018, New Jersey employers, regardless of size, must provide earned sick leave to employees they employ within the state of New Jersey. Employees will accrue one hour of earned sick leave for every 30 hours worked, and may earn up to 40 hours of earned sick leave per benefit year. Employees may carry forward unused earned sick leave to the next benefit year, but even when they do, employers do not have to allow employees to earn more than 40 hours per benefit year. Notably, employers comply with the Act if they provide paid time off at full pay so long as the paid time off accrues at the same or a better rate and allow use for the purposes specified in the Act. Current employees will begin to accrue sick leave on October 29, 2018, and can start using accrued sick leave beginning on the 120th calendar day after they commenced employment. Employees hired after October 29 will accrue sick leave immediately, but will still not be eligible to use it until the 120th day after their employment commences.

Employees will be able to use earned sick leave for the following purposes:

- To care for their own mental or physical illness, injury, or other condition.

- To care for a family member's mental or physical illness, injury, or other condition.
- To obtain treatment and other counseling in connection with the employee (or his or her family member) being a victim of domestic or sexual violence.
- To cover time during which the employer's workplace or the employee's child's school or place of care is closed by order of public officials for specific reasons.
- To attend a school-related conference, meeting, function or other event requested or required by the school of an employee's child.

The Act also prohibits retaliatory actions – such as discharge, "discipline," and "any other adverse action" – in response to an employee requesting or using earned sick leave. In fact, the Act creates a rebuttable **presumption** of unlawful retaliation if any such action is taken within 90 days of the employee engaging in certain specified protected activity, such as filing a complaint alleging a violation of the Act.

The Act also contains important record-keeping requirements, as well as notice and posting requirements. Employers must maintain, for a period of five years, records documenting hours worked and earned sick leave taken by employees. Failure to do so creates a presumption that the employer did not provide earned sick leave to that employee. The Act also requires employers to notify employees of their rights under the Act not later than 30 days after the Department of Labor issues a form of notice, to provide the notice to new employees at the time of hire (and at any time when an employee first requests it), and to conspicuously post the notice in their workplaces.

The Act is both expansive and nuanced in mandating record keeping and specific benefits. With October 29 fast approaching, employers should review their sick leave policies and practices and ensure that managers and employees understand the rights and benefits associated with the Act.

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