May 2, 2018

New Jersey Enacts Statewide Earned Sick Leave Law

On May 2, Governor Phil Murphy signed into law a bill requiring all New Jersey employers, regardless of size, to provide earned sick leave to employees they employ within the state of New Jersey. The new law goes into effect on October 29, and its various provisions—including its record-keeping requirements—will necessitate swift action from employers in order to ensure compliance. Employers with workforces covered by a collective bargaining agreement may enjoy a brief respite, as no provision of the law will apply until the expiration of the collective bargaining agreement.

Under the new law, New Jersey employees will accrue one hour of earned sick leave for every 30 hours worked. Employers are free to establish their own benefit year, a period of 12 consecutive months during which the employees will accrue and use earned sick leave. Employees may earn up to 40 hours of earned sick leave per benefit year. Notably, employers are considered to be in compliance with this new law if they provide paid time off (including for personal days, vacation days and sick days), provided that such paid time off is at full pay, accrues at a rate equal to or greater than what the new law requires and may be used for the same purposes as leave under this new law.

Employees may carry forward accrued but unused earned sick leave to the next benefit year, although employers do not have to permit the employees to accrue or carry forward more than 40 hours per benefit year. Further, employers may offer to pay employees for any unused sick leave in the final month of the employer's benefit year. The employee may choose to accept payment for all or for 50 percent of unused earned sick leave. If the employee accepts pay for only 50 percent of unused sick leave or rejects such a payment, the employee is entitled to carry over the remainder to the next benefit year.

Employers must pay employees for sick leave at the same rate of pay and with the same benefits that the employee usually earns. Employers may choose to provide an employee with the full amount of earned sick leave for a benefit year on the first day of each benefit year. Current employees will begin to accrue sick leave on the effective date of the new law (unless they have accrued earned sick leave prior to its effective date) and may use any accrued sick leave beginning on the 120th calendar day after the employee commences employment. Employees hired after the effective date will accrue sick leave immediately and will not be eligible to take sick leave until the 120th day after their employment commences. Afterward, employees may use sick leave as soon as it accrues.

Once the earned sick leave is accrued and eligible for use, employees can use it for the following specific purposes:

- To care for the employee's own mental or physical illness, injury or other condition
- To care for the employee's family member's mental or physical illness, injury or other condition
- To obtain treatment and other counseling in connection with the employee or the employee's 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 new law contains strong anti-retaliation protection. Employers may not take any retaliatory personnel action—defined broadly to include, for example, discharge, suspension, "discipline," reduction of work or "any other adverse action"—because the employee requests or uses earned sick leave either in accordance with the sick leave law or the employer's own sick leave policy. Notably, the law creates a rebuttable presumption of an unlawful retaliatory personnel action if any such

action is taken within 90 days of the employee engaging in certain specified protected activity, including filing a complaint alleging a violation of the law or opposing any policy, practice or act that is illegal under the law.

The sick leave law also contains important record-keeping requirements. Employers must maintain, for a period of five years, records documenting hours worked and earned sick leave taken by employees. If an employer fails to maintain adequate records for an employee, it will be presumed that the employer failed to provide earned sick leave to that employee. The new law generally adopts the remedies and penalties currently available under the New Jersey State Wage and Hour Law (i.e., payment of back wages, fines up to $1,000 per violation and administrative fees).

There are also notice and posting requirements whereby an employer must provide notification to employees of their rights under the law not later than 30 days after the form of notice is issued by the Department of Labor. Employers must also provide the notice to new employees at the time of hiring and at any time when it first is requested by an employee. Employers must also conspicuously post the notification in each of the employer's workplaces in locations that are accessible to all employees.

In recent years, several municipalities and counties around the state passed their own local earned sick leave ordinances. The new statewide law pre-empts those ordinances. New Jersey now joins Washington, D.C., and a number of states, including Connecticut, Massachusetts, Rhode Island and Vermont, in requiring sick leave throughout the state.

New Jersey's earned sick leave law is both expansive and nuanced in mandating record keeping and specific benefits. With only 180 days remaining until the law goes into effect, employers should review their sick leave policies and practices and ensure that managers and employees understand the rights and benefits associated with this new law.

Authors



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly

Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com