



## **New Jersey Paid Sick Leave Act**

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On May 2, 2018, New Jersey Governor Phil Murphy signed into law the [New Jersey Paid Sick Leave Act](#) (Act). The Act, which goes into effect on October 29, 2018,<sup>1</sup> requires nearly all New Jersey employers, regardless of size, to provide up to 40 hours of paid sick leave to employees during an employer-established “benefit year.”

In an effort to provide uniform obligations to employers operating within New Jersey, as of October 29, 2018 the Act preempts all existing and future local paid sick leave ordinances.<sup>2</sup>

This article summarizes many of the provisions of the Act. Nonprofits are encouraged to read the full text of the Act, which is available [here](#), after reading this article.

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<sup>1</sup> The Act will not apply to employees covered by a collective bargaining agreement (CBA) that is in effect on October 29, 2018, until the expiration of the CBA. However, the Act provides that employees or employee representatives are permitted to waive the rights or benefits provided under the Act as part of the negotiation of a CBA.

<sup>2</sup> See Pro Bono Partnership’s website article, [New Jersey’s Municipal Sick Leave Ordinances: An Overview](#), for more details about the 13 municipal ordinances that will be preempted as of October 29, 2018.

## ***Covered Employers and Employees***

The Act applies to nearly all employers with one or more employees in New Jersey.<sup>3</sup> There is no small employer exception.

New Jersey employees of covered employers are eligible for paid sick leave under the Act. However, “per diem health care employees,”<sup>4</sup> construction workers employed pursuant to a collective bargaining agreement, and public employees who are provided sick leave with full pay pursuant to another New Jersey law or regulation are expressly

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<sup>3</sup> The Act does not apply to public employers that are required to provide their employees with sick leave with full pay pursuant to another New Jersey law or regulation.

<sup>4</sup> The Act provides that:

“Per diem health care employee” means ...:

- (1) [any] health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey Department of Health;
- (2) any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; or
- (3) any first aid, rescue or ambulance squad member employed by a hospital system.

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

- (1) works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;
- (2) works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; and
- (3) either:
  - (a) has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under this act under the terms of employment; or
  - (b) has waived earned sick leave benefits as provided under this act under terms of employment for alternative benefits or consideration.

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

excluded from the Act's definition of "employee" and, therefore, are ineligible for the benefits provided by the Act.

Employees of a temporary help service firm are covered by the Act. Their paid sick leave accrues based on their total time worked with the firm, not for each separate client for whom they perform services.

### ***Paid Sick Leave Accrual***

The Act requires employers to establish a "benefit year" of 12 consecutive months during which an employee *working in New Jersey* can accrue up to 40 hours of paid sick leave, at the rate of one hour for every 30 hours worked. Employers cannot change the benefit year without providing notice to the New Jersey Department of Labor and Workforce Development (NJDLWD).

Alternatively, and perhaps requiring much less administrative work, employers are permitted to utilize one of the following two options:

- Provide (or "frontload") employees with 40 hours of paid sick time on the first day of each benefit year.
- Utilize a paid-time-off (PTO) policy, as long as the policy (1) provides an amount of paid sick leave at full pay that is equal to or greater than the amount required under the Act, (2) accrues paid sick leave at a rate that is equal to or greater than the rate required under the Act, and (3) permits the use of PTO for all the purposes for which leave may be taken under the Act.<sup>5</sup>

### ***Maximum Required Accrual, Use, and Carryover of Paid Sick Leave***

Employers are not required to permit an employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of paid sick leave.

The Act provides a mechanism by which employers that use the accrual method for earning paid sick leave may offer, in the final month of a benefit year, to pay an employee for the full amount of the employee's unused accrued paid sick leave. The employee has 10 calendar days to accept or reject the offer. The employee may choose a payment for either 50 or 100 percent of the employee's unused accrued paid sick leave.

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<sup>5</sup> The Act expressly provides: "An employer shall be in compliance with [the act's paid leave requirements] if the employer offers paid time off, which is fully paid and shall include, but is not limited to personal days, vacation days, and sick days, and may be used for the purposes [set forth in] this act in the manner provided by this act, and is accrued at a rate equal to or greater than the rate described in [the act]."

Employers that frontload employees with 40 hours of paid sick time on the first day of each benefit year must either provide to the employees a payment for the full amount of their unused paid sick leave in the final month of the benefit year or carry forward any unused paid sick leave to the next benefit year.

### ***Transitional Rules for Employees Who Did Not Accrue Sick Leave Prior to October 29, 2018***

For employees who become eligible to accrue paid sick leave for the first time on or after October 29, 2018, the following transitional rules apply:

- For an employee who commences employment before October 29, 2018, paid sick leave must begin to accrue on October 29, 2018 and the employee must be allowed to use the accrued paid sick leave beginning on the 120th calendar day after the employee commences employment. (For example, for an employee who commences employment on October 28, 2018, the 120th day after October 28 is February 25, 2019.)
- For an employee who commences employment on or after October 29, 2018, paid sick leave must begin to accrue on the date that employment commences and the employee must be allowed to use the paid sick leave beginning on the 120th calendar day thereafter.

In either situation, an employer is permitted to shorten or eliminate the 120-day waiting period.

### ***Transfers, Rehires, and Successor Employers***

Unused accrued paid sick leave survives transfers to a separate division, entity, or location of the same employer; separations from employment followed by a rehiring or reinstatement within six months; and acquisitions by successor companies.

### ***Reasons for Which an Employee May Take Paid Sick Leave***

An eligible employee is entitled to take paid sick leave for any one or more of the following reasons:

1. Time needed for diagnosis, care, treatment, or recovery relating to the employee's own mental or physical health condition, as well as for preventive medical care.

2. Time needed for diagnosis, care, treatment, or recovery relating to a family member's mental or physical health condition, as well as for preventive medical care.
3. Time needed as a result of an employee's or family member's status as a victim of domestic or sexual violence, including time off for counseling, accessing victim and legal services, relocation, or participation in any civil or criminal proceedings related to the violence.<sup>6</sup>
4. Time when the employee's workplace or the school or place of childcare for the employee's child is closed by order of a public official due to a public health emergency, or when the employee or a family member has been ordered quarantined by a public health authority.
5. Time to attend certain school-related conferences, meetings, or other events requested or required by the school of an employee's child, or to attend a meeting regarding care provided in connection with the child's health conditions or disability.

The Act defines "family member" as:

- A child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee;
- A spouse, domestic partner, or civil union partner of a parent or grandparent of the employee;
- A sibling of a spouse, domestic partner, or civil union partner of the employee; or
- Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.<sup>7</sup>

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<sup>6</sup> See also Pro Bono Partnership's website article, [New Jersey SAFE Act: Unpaid Leave for Victims of Domestic or Sexual Violence](#). The New Jersey Security and Financial Empowerment Act (NJ SAFE Act) requires New Jersey employers with 25 or more employees to provide up to 20 days of *unpaid* leave during a 12-month period to eligible employees when the employees or certain family members of the employees have been victimized by "an incident of domestic violence" or "a sexually violent offense." Nonprofits need to note that the NJ SAFE Act and the New Jersey Paid Sick Leave Act contain different definitions of similar terms.

<sup>7</sup> The Act also includes, among others, the following definitions:

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

"Parent" means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or of the employee's spouse, domestic partner, or civil union partner, or a

## ***Employees Use and Payment of Paid Sick Leave***

The Act contains a number of provisions relating to the use and payment of paid sick leave:

- Employers can choose the increments in which an employee may use paid sick leave. However, the largest increment cannot be longer than the number of hours the employee is scheduled to work during the shift for which paid sick leave will be used.
- Employers must pay employees for their paid sick leave at the same rate of pay, with the same benefits, as the employees normally earn.
- Unless an employer maintains a policy or is subject to a collective bargaining agreement that states otherwise, the Act does not require an employer to pay out an employee's unused accrued paid sick leave upon separation from employment. To avoid disputes, if an employer does not want to pay out unused accrued paid sick leave upon separation, it would be best that that policy be set forth in writing.
- If an employee uses paid sick leave for one of the purposes covered by the Act, the employee cannot be compelled to work additional hours or shifts. However, an employee may voluntarily agree to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed.
- An employee cannot be required to search for or find a replacement worker to cover the hours during which the employee is using paid sick leave.
- Employers can take disciplinary action against an employee who uses paid sick leave for purposes other than those permitted by the Act.

## ***Employee Notice and Documentation Requirements***

The Act permits employers to:

- Require up to seven calendar days' advance notice when an employee's need to use paid sick leave is foreseeable. Employers should notify employees in

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person who stood in loco parentis of the employee or the employee's spouse, domestic partner, or civil union partner when the employee, spouse or partner was a minor child.

"Sibling" means a biological, foster, or adopted sibling of an employee.

Nonprofits should note that the definitions of who qualifies as a family member, child, parent, and/or sibling differ among the various laws that permit employees leaves of absence with respect to family members and/or pay with respect to such leaves.

advance as to how much advance notice must be provided. Employees need to make a reasonable effort to schedule the use of paid sick leave in a manner that does not unduly disrupt their employers' operations.

- Require notice as soon as practicable when an employee's need to use paid sick leave is not foreseeable, provided the employers have notified employees of this requirement.
- Prohibit the use of foreseeable paid sick leave on certain dates as well as require reasonable documentation if unforeseeable paid sick leave is used on those dates.
- Request reasonable documentation to confirm the employee is using paid sick leave for a purpose permitted under the Act when an employee is absent for three or more consecutive days. The Act sets forth certain documentation that an employer must accept as sufficient support for the use of the leave.

### ***Employer Notification/Posting Requirement***

Employers must (1) conspicuously post a notice about the Act in each of their workplaces in New Jersey and (2) provide a copy of that notice to each of their New Jersey employees within 30 days after the NJDLWD issues the form of notice and, thereafter, at the time of each new employee's hiring and upon the first request of an employee.

The NJDLWD will make the notice available in English, Spanish, and any other language that the NJDLWD determines is the first language of a significant number of workers in the State. An employer must use the notice in English, Spanish, or any other language for which the NJDLWD has provided notices and that is the first language of a majority of the employer's workforce.<sup>8</sup>

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<sup>8</sup> The Act expressly states that an "employer shall use the notification in English, Spanish **or** any other language for which the [NJDLWD] has provided notifications and which is the first language of a majority of the employer's workforce." (Emphasis added.) Although the foregoing sentence uses the word "or," if a majority of an employer's workforce does not speak English or Spanish, the employer should still consider posting and distributing the English and Spanish versions of the NJDLWD's notice.

The NJDLWD normally posts its new required notices on its [Employer Poster Packet](#) web page. Pro Bono Partnership has a listing of the significant federal and New Jersey posters/notices that most employers are required to post or distribute to their employees. Nonprofits can request a copy of the listing from Christine Michelle Duffy, at [cduffy@probonopartner.org](mailto:cduffy@probonopartner.org).

## ***Employer Recordkeeping and Confidentiality Requirements***

Employers are required to maintain records documenting hours worked and paid sick leave used by employees. Employers must retain these records for a period of five years and make the records available for inspection upon request by the NJDLWD. If an employer fails to maintain or retain adequate records for an employee, there will be a rebuttable presumption that the employer failed to provide paid sick leave to the employee.

Any information an employer possesses regarding either (1) the health of an employee or family member or (2) domestic or sexual violence affecting an employee or family member must be treated as confidential and not disclosed except to the affected employee or with the written permission of the affected employee.

## ***No Retaliation for Engaging in Protected Activity***

If an employer takes adverse action against an employee within 90 days after the employee engaged in specified protected activity (e.g., filing a complaint, cooperating in an investigation, and/or informing others of their rights under the Act), there will be a rebuttable presumption that the employer retaliated against the employee. In addition, an employer may not discriminate or retaliate against an employee because the employee requests or uses paid sick leave in accordance with the Act or the employer's own paid sick leave policy.

An employer is not permitted to count paid sick leave taken under the Act as an absence that might result in the employee being subject to discipline, demotion, suspension, discharge, a loss or reduction of pay, or any other adverse action.

## ***Enforcement***

The Act provides for a private right of action which includes, among other remedies, recovery of back wages and liquidated damages in an amount equal to the actual damages sustained by an aggrieved employee. That is, the employee can recover double back wages.

## ***Next Steps***

All nonprofits that operate in New Jersey should:

- Review their PTO and paid sick leave policies and recordkeeping practices to determine compliance with the provisions of the Act.



- Confer with their payroll service provider or professional employer organization, and, if necessary, with an experienced employment lawyer.
- Train supervisors about the requirements of the Act.
- Be on the lookout for the NJDLWD's forthcoming:
  - Regulations under the Act, which will further define and clarify the obligations and responsibilities of employers and employees and which should be posted at [http://www.nj.gov/labor/lwdhome/content/LWD\\_LawRuleAdminDecisions.html](http://www.nj.gov/labor/lwdhome/content/LWD_LawRuleAdminDecisions.html).
  - Form of notice that all employers will need to post in their New Jersey workplaces and distribute to all of their employees. The notice should be posted on the NJDLWD's [Employer Poster Packet](#) web page
- Remember that the various laws that require or provide time off and/or pay for leaves of absence have differing definitions, requirements, and obligations. These laws include the New Jersey Paid Sick Leave Act, the New Jersey Family Leave Act (applicable to nonprofits with 50 or more employees), the New Jersey Family Leave Insurance Benefits Law, the New Jersey Temporary Disability Insurance Benefits Law, the New Jersey Workers' Compensation Act, the New Jersey Security and Financial Empowerment (SAFE) Act (applicable to nonprofits with 25 or more employees), the federal Family and Medical Leave Act (applicable to nonprofits with 50 or more employees), the New Jersey Law Against Discrimination, and the Americans with Disabilities Act (applicable to nonprofits with 15 or more employees).

## **Questions**

If you have any questions about the New Jersey Paid Sick Leave Act and you are associated with a charitable nonprofit with employees in New Jersey, feel free to contact Christine Michelle Duffy, Director of the New Jersey Program of Pro Bono Partnership, at (973) 240-6955. If your nonprofit needs assistance in revising its employee handbook or leaves-of-absence policy, please contact the Pro Bono Partnership lawyer with whom you usually work.

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