

Governor Murphy Signs New Jersey Paid Sick Leave Law

On May 2, 2018, New Jersey Governor Phil Murphy signed into law the New Jersey Earned Sick and Safe Days Act (the "Act"), providing the vast majority of New Jersey's private sector workers paid sick leave benefits. The Act, which will take effect on October 29, 2018, makes New Jersey the tenth state, in addition to the District of Columbia, to offer these benefits. Once it takes effect, the Act also preempts all local laws in New Jersey that currently provide for paid sick leave, providing both employees and employers uniformity that has been lacking since several of New Jersey's towns and cities began passing sick leave laws over the past several years.

The Act provides that each employer must provide earned sick leave to its employees. Here are some of the other key provisions of the Act:

Eligibility

The Act defines "employee" broadly to include all employees working for an employer in the State of New Jersey, except construction workers covered by a collective bargaining agreement, per diem health care workers, and public employees who already have sick leave benefits. The Act specifically includes in the definition of "employer" temporary help service firms who place employees with client firms. Employees of these temp firms accrue sick leave benefits based on their total time worked with the temp service, not based on time worked on specific assignments with client firms. The Act does not contain an exemption for small businesses, and applies to all private employers in the State, regardless of size.

Accrual and Carryover

Employees accrue sick leave benefits at a rate of one hour of sick leave for every 30 hours worked. Employers also have the option of "frontloading" the sick leave days on the first day of the year. Employees can carry over up to 40 hours of earned, but unused sick leave from year-to-year, but employers can prohibit employees from carrying over more than 40 hours. Notably, if an employer already provides paid time off ("PTO") to its employees (i.e. vacation or personal leave banks), the employer can continue to rely upon its existing PTO policy to satisfy the requirements of the Act, as long as such policy provides at least 40 hours of paid leave per year, and as long as the PTO may be used for the purposes set forth in the Act.

Permitted Uses

Employees can use paid sick leave for the following purposes:

- (1) to care for the employee's own illness, injury, or "other adverse health condition," or for preventive medical care;
- (2) to aid a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's illness, injury or "other adverse health condition," or during preventive medical care for the family member;
- (3) when an absence from work is the result of an employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to obtain medical attention, counseling services, legal services, relocation services, or to participate in any legal proceedings arising therefrom;



- (4) when the workplace, school, or childcare facility is closed by order of a public official due to an epidemic or other public health emergency; or
- (5) to attend a school-related conference, meeting, function or other event, or to attend a meeting regarding care provided to an employee's child regarding the child's health conditions or disability.

Newly hired employees can use accrued leave benefits for the above purposes after a 120 day waiting period. Employers may also designate "black out days" for which employees cannot use sick leave, and require that employees submit documentation if unforeseeable sick leave is used on one of these days. Employers may also require employees to submit documentation for sick leave of more than three consecutive days to confirm that leave is being taken for one of the above purposes.

Employee Notice

If the need for leave is foreseeable, an employer can require that an employee give advance notice of no more than seven days of the need for leave, and the number of days off needed. Employees are also required to use "reasonable efforts" to schedule the use of leave so that it will not "unduly disrupt the operations of the employer." When the reason for leave is not foreseeable, employers can require that employees give notice "as soon as practicable."

Payout

For employers who use an accrual system, the Act gives these employers the option of offering to pay out employees for accrued, but unused sick leave at the end of the year. Employees have ten days from the date of the offer to accept the payout, or choose the roll over the leave to the following year (with the 40 hour cap, as noted above). For employers who "frontload" the leave in the beginning of the year, the Act requires these employers to pay out employees for unused sick leave at the end of the year, or carry forward the unused leave to the next year. The Act does not require employers to pay out unused sick time to employees upon termination of employment, unless the employer's policy provides otherwise.

Recordkeeping and Employer Notice

The Act requires companies to maintain records of sick leave used for a period of five years. Companies must also post a notice of employees' rights under the Act in the form provided by the Department of Labor, and provide this notice to each employee within 30 days after the Department of Labor issues the notification. Employers must also issue this notice to new employees upon hiring.

Enforcement

Employees may bring a private lawsuit under the Act, and potential remedies include liquidated damages (i.e. double damages). The Act also prohibits retaliation against an employee for exercising his or her rights under the Act.

Given the far reach and implications of the Act, we recommend employers review their current PTO and sick leave policies now, and update their policies and procedures to comply with the Act.

This *Labor & Employment Law Alert* was written by Keya C. Denner. If you have any questions about the information contained in this alert or any other questions related to labor & employment law, please feel free to contact him at kcdenner@nmmlaw.com.

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