

ASSEMBLY, No. 4125

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 20, 2013

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Co-Sponsored by:

Assemblymen Diegnan, Fuentes and Benson

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2013)

1 AN ACT mandating certain employers provide earned sick leave to
2 employees.

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 "Certified Domestic Violence Specialist" means a person who
9 has fulfilled the requirements of certification as a Domestic
10 Violence Specialist established by the New Jersey Association of
11 Domestic Violence Professionals.

12 "Child" means a biological, adopted, or foster child, stepchild or
13 legal ward of an employee, child of a domestic partner or civil
14 union partner of the employee, if the child is less than 19 years of
15 age, or is 19 years of age or older but incapable of self-care because
16 of mental or physical impairment.

17 "Civil union" means a civil union as defined in section 2 of
18 P.L.2006, c.103 (C.37:1-29).

19 "Commissioner" means the Commissioner of Labor and
20 Workforce Development.

21 "Department" means the Department of Labor and Workforce
22 Development.

23 "Designated domestic violence agency" means a county-wide
24 organization with a primary purpose to provide services to victims
25 of domestic violence, and which provides services that conform to
26 the core domestic violence services profile as defined by the
27 Division of Youth and Family Services in the Department of
28 Children and Families and is under contract with the division for
29 the express purpose of providing the services.

30 "Domestic partner" means a domestic partner as defined in
31 section 3 of P.L.2003, c.246 (C.26:8A-3).

32 "Domestic violence" means domestic violence as defined in
33 section 3 of P.L.1991, c.261 (C.2C:25-19) and section 1 of
34 P.L.2003, c.41 (C.17:29B-16), stalking, or any sexually violent
35 offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26).

36 "Employee" means an individual engaged in service to an
37 employer in the business of the employer for compensation.

38 "Employer" means any person, firm, business, educational
39 institution, nonprofit agency, corporation, limited liability company
40 or other entity that employs employees in the State.

41 "Family member" means a child, grandchild, sibling, spouse,
42 domestic partner, civil union partner, parent, or grandparent of an
43 employee, or a spouse, domestic partner, or civil union partner of a
44 parent or grandparent of the employee, or a sibling of a spouse,
45 domestic partner, or civil union partner of the employee.

46 "Health care professional" means any person licensed under
47 federal, State, or local law, or the laws of a foreign nation, to
48 provide health care services, or any other person who has been

1 authorized to provide health care by a licensed health care
2 professional, including but not limited to doctors, nurses and
3 emergency room personnel.

4 "Parent" means a biological, adoptive, or foster parent,
5 stepparent, or legal guardian of an employee or of the employee's
6 spouse, domestic partner, or civil union partner, or a person who
7 stood in loco parentis of the employee or the employee's spouse,
8 domestic partner, or civil union partner when the employee, spouse
9 or partner was a minor child.

10 "Retaliatory personnel action" means denial of any right
11 guaranteed under this act and any threat, constructive discharge,
12 suspension, demotion, unfavorable reassignment, refusal to
13 promote, disciplinary action, sanction, or any other adverse action
14 against an employee.

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

17 "Small employer" means an employer who had, on average,
18 fewer than 10 employees during the preceding calendar year, or
19 during the current year if the employer had no employees during the
20 preceding calendar year. Periods of time in which the employer had
21 no employees shall not be considered in determining the average
22 number of employees. In determining whether an employer is a
23 small employer, the number of employees shall include all
24 individuals working for compensation on a full-time, part-time or
25 temporary basis, including individuals made available to work at a
26 workplace of the employer through a temporary help services firm.

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
31 hours worked, the employee shall accrue one hour of earned sick
32 leave. The employer shall not be required to permit the employee
33 to accrue at any one time, or carry forward from one year to the
34 next, more than 40 hours of earned sick leave if the employer is a
35 small employer, or more than 72 hours of earned sick leave if the
36 employer is not a small employer. Unless the employee has accrued
37 earned sick leave prior to January 1, 2014, the earned sick leave
38 shall begin to accrue on January 1, 2014 or on the 90th day after the
39 hiring of the employee if hired after January 1, 2014, unless the
40 employer agrees to an earlier date. The employee may use earned
41 sick leave as it is accrued.

42 b. An employer shall be in compliance with this section if the
43 employer offers any other fully paid leave that may be used for the
44 purposes of section 3 of this act in the manner provided by this act,
45 and is accrued at a rate equal to or greater than the rate described in
46 this section.

47 c. The employer shall pay the employee for earned sick leave
48 at the same rate of pay with the same benefits as the employee

1 normally earns, except that the pay rate shall not be less than the
2 minimum wage required for the employee pursuant to section 5 of
3 P.L.1966, c.113 (C.34:11-56a4).

4 d. Upon the mutual consent of the employee and employer, an
5 employee may voluntarily choose to work additional hours or shifts
6 during the same or following pay period, in lieu of hours or shifts
7 missed, but shall not be required to use accrued earned sick leave.
8 An employer may not require, as a condition of an employee's using
9 earned sick leave, that the employee search for or find a
10 replacement worker to cover the hours during which the employee
11 is using earned sick leave.

12

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

15 (1) Time needed for diagnosis, care, or treatment of, or recovery
16 from, an employee's mental or physical illness, injury or other
17 adverse health condition, or for preventive medical care for the
18 employee;

19 (2) Time needed for the employee to aid or care for a family
20 member of the employee during diagnosis, care, or treatment of, or
21 recovery from, the family member's mental or physical illness,
22 injury or other adverse health condition, or during preventive
23 medical care for the family member;

24 (3) Absence necessary due to circumstances resulting from the
25 employee, or a family member of the employee, being a victim of
26 domestic violence, if the leave is to allow the employee to obtain
27 for the employee or the family member: medical attention needed to
28 recover from physical or psychological injury or disability caused
29 by domestic violence; services from a designated domestic violence
30 agency or other victim services organization; psychological or other
31 counseling; relocation; or legal services, including obtaining a
32 restraining order or preparing for, or participating in, any civil or
33 criminal legal proceeding related to the domestic violence; or

34 (4) Time during which the employee is not able to work because
35 of a closure of the employee's workplace, or the school or place of
36 care of a child of the employee, by order of a public official due to
37 an epidemic or other public health emergency, or because of the
38 issuance by a public health authority of a determination that the
39 presence in the community of the employee, or a member of the
40 employee's family in need of care by the employee, would
41 jeopardize the health of others.

42 b. If an employee's need to use earned sick leave is foreseeable,
43 an employer may require advance notice, not to exceed seven days
44 prior to the date the leave is to begin, of the intention to use the
45 leave and its expected duration, and shall make a reasonable effort
46 to schedule the use of earned sick leave in a manner that does not
47 unduly disrupt the operations of the employer. If the reason for the
48 leave is not foreseeable, an employer may require an employee to

1 give notice of the intention as soon as practicable. For earned sick
2 leave of three or more consecutive days, an employer may require
3 reasonable documentation that the leave is being taken for the
4 purpose permitted under subsection a. of this section. If the leave is
5 permitted under paragraph (1) or (2) of subsection a. of this section,
6 documentation signed by a health care professional who is treating
7 the employee or the family member of the employee indicating the
8 need for the leave and, if possible, number of days of leave, shall be
9 considered reasonable documentation. If the leave is permitted
10 under paragraph (3) of subsection a. of this section because of
11 domestic violence, any of the following shall be considered
12 reasonable documentation of the domestic violence: medical
13 documentation; a law enforcement agency record or report; a court
14 order; documentation that the perpetrator of the domestic violence
15 has been convicted of a domestic violence offense; certification
16 from a certified Domestic Violence Specialist or a representative of
17 a designated domestic violence agency or other victim services
18 organization; or other documentation or certification provided by a
19 social worker, counselor, member of the clergy, shelter worker,
20 health care professional, attorney, or other professional who has
21 assisted the employee or family member in dealing with the
22 domestic 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. An employer who chooses
26 to require documentation for earned sick leave shall pay all out-of-
27 pocket expenses the employee incurs to obtain the documentation.

28 c. Nothing in this act shall be deemed to require an employer to
29 provide earned sick leave for an employee's leave for purposes
30 other than those identified in this section, or prohibit the employer
31 from taking disciplinary action against an employee who uses
32 earned sick leave for purposes other than those identified in this
33 section. Unless an employer policy or collective bargaining
34 agreement provides for the payment of accrued earned sick leave
35 upon termination, resignation, retirement or other separation from
36 employment, an employee shall not be entitled under this section to
37 payment of unused earned sick leave upon the separation from
38 employment.

39 d. Any information an employer possesses regarding the health
40 of an employee or any family member of the employee or domestic
41 violence affecting an employee or employee's family member shall
42 be treated as confidential and not disclosed except to the affected
43 employee or with the written permission of the affected employee.
44

45 4. a. No employer shall take retaliatory personnel action or
46 discriminate against an employee because the employee requests or
47 uses earned sick leave either in accordance with this act or the
48 employer's own earned sick leave policy, as the case may be, or

1 files a complaint with the commissioner alleging the employer's
2 violation of any provision of this act, or informs any other person of
3 their rights under this act. No employer shall count earned sick
4 leave taken under this act as an absence that may result in the
5 employee being subject to discipline, discharge, demotion,
6 suspension, a loss or reduction of pay, or any other adverse action.

7 b. There shall be a rebuttable presumption of an unlawful
8 retaliatory personnel action under this section whenever an
9 employer takes adverse action against an employee within 90 days
10 of when that employee: files a complaint with the department or a
11 court alleging a violation of any provision of this section; informs
12 any person about an employer's alleged violation of this section;
13 cooperates with the department or other persons in the investigation
14 or prosecution of any alleged violation of this section; opposes any
15 policy, practice, or act that is unlawful under this section; or
16 informs any person of his or her rights under this section.

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

19 d. Any violator of the provisions of this section shall be subject
20 to relevant penalties and remedies provided by the "New Jersey
21 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.),
22 including the penalties and remedies provided by section 25 of that
23 act (C.34:11-56a24) for discharge or other discrimination.

24
25 5. Any failure of an employer to make available or pay earned
26 sick leave as required by this act, or any other violation of this act,
27 shall be regarded as a failure to meet the wage payment
28 requirements of the "New Jersey State Wage and Hour Law,"
29 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
30 as the case may be, and all remedies, penalties or other measures
31 provided by that act for failure to pay wages or other violations of
32 that act shall be applicable, including, but not limited to, penalties
33 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22
34 and 34:11-56a24), and civil actions by employees pursuant to
35 section 26 of that act (C.34:11-56a25), except that an award to an
36 employee in a civil act shall include, in addition to the amount
37 provided pursuant to section 26 of that act (C.34:11-56a25), any
38 actual damages suffered by the employee as the result of the
39 violation plus an equal amount of liquidated damages.

40
41 6. Employers shall retain records documenting hours worked
42 by employees and earned sick leave taken by employees, for a
43 period of five years, and shall, upon demand, allow the department
44 access to those records to monitor compliance with the
45 requirements of this act. If an employee makes a claim that the
46 employer has failed to provide earned sick leave required by this act
47 and the employer has not maintained or retained adequate records
48 documenting hours worked by the employee and earned sick leave

1 taken by the employee or does not allow the department access to
2 the records, it shall be presumed that the employer has failed to
3 provide the earned sick leave, absent clear and convincing evidence
4 otherwise. In addition, the penalties provided by the “New Jersey
5 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)
6 for violations of the requirements of that act regarding the
7 maintaining and disclosure of records shall apply to violations of
8 the requirements of this section.

9
10 7. a. Employers shall provide notification, in a form issued by
11 the commissioner, to employees of their rights under this act,
12 including the amount of earned sick leave to which they are entitled
13 and the terms of its use, and remedies provided by this act to
14 employees if an employer fails to provide the required benefits or
15 retaliates against employees exercising their rights under this act.
16 Each covered employer shall conspicuously post the notification in
17 a place or places accessible to all employees in each of the
18 employer's workplaces. The employer shall also provide each
19 employee employed by the employer with a written copy of the
20 notification: not later than 30 days after the form of the notification
21 is issued; at the time of the employee's hiring, if the employee is
22 hired after the issuance; and at any time, when first requested by the
23 employee. The commissioner shall make the notifications available
24 in English, in Spanish, and any other language that the
25 commissioner determines is the first language of a significant
26 number of workers in the State and the employer shall use the
27 notification in English, Spanish or any other language for which the
28 commissioner has provided notifications and which is the first
29 language of a majority of the employer's workforce.

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

35
36 8. a. This act provides minimum requirements pertaining to
37 earned sick leave and shall not be construed to preempt, limit, or
38 otherwise affect the applicability of any other federal, State or local
39 law, ordinance, regulation, requirement, policy, or standard that
40 provides rights or benefits to employees which are more favorable
41 to employees than those required by this act or which provide rights
42 or benefits to employees not covered by this act.

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

45 (1) Requiring an employer to reduce, or justifying an employer
46 in reducing, rights or benefits provided by the employer pursuant to
47 an employer policy or collective bargaining agreement which are
48 more favorable to employees than those required by this act or

1 which provide rights or benefits to employees not covered by this
2 act;

3 (2) Preventing or prohibiting the employer from agreeing,
4 through a collective bargaining agreement or employer policy, to
5 provide rights or benefits which are more favorable to employees
6 than those required by this act or to provide rights or benefits to
7 employees not covered by this act; or

8 (3) Prohibiting an employer from establishing a policy whereby
9 an employee may donate unused accrued earned sick leave to
10 another employee or other employees.

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

15
16 10. This act shall take effect on the 120th day following
17 enactment.

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STATEMENT

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22 This bill requires each employer to provide earned sick leave to
23 each employee it employs in the State. The employee accrues one
24 hour of earned sick leave for every 30 hours worked. The employer
25 is not required to permit the employee to accrue at any one time, or
26 carry forward from one year to the next, more than 40 hours of
27 earned sick leave if the employer has less than 10 employees in the
28 State, or more than 72 hours of earned sick leave if the employer
29 has 10 or more employees. Unless the employee accrued earned
30 sick leave with the employer before January 1, 2014, the leave
31 accrues beginning on that date or on the 90th day after the
32 employee is hired, unless the employer agrees to an earlier date.

33 The employer is required to pay the employee for earned sick
34 leave at the same rate of pay with the same benefits as the employee
35 normally earns, except that the pay rate may not be less than the
36 State minimum wage. Earned sick leave may be used for:

37 1. Time needed for diagnosis, care, or treatment of, or recovery
38 from, an employee's mental or physical illness, injury or other
39 adverse health condition, or for preventive medical care for the
40 employee;

41 2. Time needed for the employee to care for a family member
42 during diagnosis, care, or treatment of, or recovery from, the family
43 member's mental or physical illness, injury or other adverse health
44 condition, or preventive medical care for the family member; or

45 3. Absence needed due to circumstances resulting from the
46 employee or a family member being a victim of domestic violence,
47 if the leave is to obtain medical attention, counseling, relocation,
48 legal or other services.

1 The bill prohibits retaliatory personnel actions against an
2 employee for the use or requested use of earned sick leave or for
3 filing of a complaint for an employer violation. The bill sets
4 requirements for record keeping and for notifying workers of their
5 rights under the bill. It provides for penalties and other remedies
6 for non-compliance with the requirements of the bill, based on the
7 penalties and remedies for non-compliance with the “New Jersey
8 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.).

9 The bill specifies that it is intended to set minimum standards for
10 earned sick leave, but not to prevent any employer policies,
11 collective bargaining agreements or other laws or ordinances which
12 set higher standards.