

SENATE, No. 785

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

Senators Codey, Rice, Cunningham, Lesniak, Sarlo, Gill and Stack

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/9/2015)

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

1 provide health care services, or any other person who has been
2 authorized to provide health care by a licensed health care
3 professional, including but not limited to doctors, nurses and
4 emergency room personnel.

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

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

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

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

28 "Spouse" means a husband or wife.

29

30 2. a. Each employer shall provide earned sick leave to each
31 employee working for the employer in the State. For every 30
32 hours worked, the employee shall accrue one hour of earned sick
33 leave. The employer shall not be required to permit the employee
34 to accrue at any one time, or carry forward from one year to the
35 next, more than 40 hours of earned sick leave if the employer is a
36 small employer, or more than 72 hours of earned sick leave if the
37 employer is not a small employer. Unless the employee has accrued
38 earned sick leave prior to January 1, 2014, the earned sick leave
39 shall begin to accrue on January 1, 2014 or on the 90th day after the
40 hiring of the employee if hired after January 1, 2014, unless the
41 employer agrees to an earlier date. The employee may use earned
42 sick leave as it is accrued.

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

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1 c. The employer shall pay the employee for earned sick leave
2 at the same rate of pay with the same benefits as the employee
3 normally earns, except that the pay rate shall not be less than the
4 minimum wage required for the employee pursuant to section 5 of
5 P.L.1966, c.113 (C.34:11-56a4).

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

14

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

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

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

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

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

44 b. If an employee's need to use earned sick leave is foreseeable,
45 an employer may require advance notice, not to exceed seven days
46 prior to the date the leave is to begin, of the intention to use the
47 leave and its expected duration, and shall make a reasonable effort

1 to schedule the use of earned sick leave in a manner that does not
2 unduly disrupt the operations of the employer. If the reason for the
3 leave is not foreseeable, an employer may require an employee to
4 give notice of the intention as soon as practicable. For earned sick
5 leave of three or more consecutive days, an employer may require
6 reasonable documentation that the leave is being taken for the
7 purpose permitted under subsection a. of this section. If the leave is
8 permitted under paragraph (1) or (2) of subsection a. of this section,
9 documentation signed by a health care professional who is treating
10 the employee or the family member of the employee indicating the
11 need for the leave and, if possible, number of days of leave, shall be
12 considered reasonable documentation. If the leave is permitted
13 under paragraph (3) of subsection a. of this section because of
14 domestic violence, any of the following shall be considered
15 reasonable documentation of the domestic violence: medical
16 documentation; a law enforcement agency record or report; a court
17 order; documentation that the perpetrator of the domestic violence
18 has been convicted of a domestic violence offense; certification
19 from a certified Domestic Violence Specialist or a representative of
20 a designated domestic violence agency or other victim services
21 organization; or other documentation or certification provided by a
22 social worker, counselor, member of the clergy, shelter worker,
23 health care professional, attorney, or other professional who has
24 assisted the employee or family member in dealing with the
25 domestic violence. If the leave is permitted under paragraph (4) of
26 subsection a. of this section, a copy of the order of the public
27 official or the determination by the health authority shall be
28 considered reasonable documentation. An employer who chooses
29 to require documentation for earned sick leave shall pay all out-of-
30 pocket expenses the employee incurs to obtain the documentation.

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

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

1 4. a. No employer shall take retaliatory personnel action or
2 discriminate against an employee because the employee requests or
3 uses earned sick leave either in accordance with this act or the
4 employer's own earned sick leave policy, as the case may be, or
5 files a complaint with the commissioner alleging the employer's
6 violation of any provision of this act, or informs any other person of
7 their rights under this act. No employer shall count earned sick
8 leave taken under this act as an absence that may result in the
9 employee being subject to discipline, discharge, demotion,
10 suspension, a loss or reduction of pay, or any other adverse action.

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

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

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

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

44
45 6. Employers shall retain records documenting hours worked
46 by employees and earned sick leave taken by employees, for a
47 period of five years, and shall, upon demand, allow the department

1 access to those records to monitor compliance with the
2 requirements of this act. If an employee makes a claim that the
3 employer has failed to provide earned sick leave required by this act
4 and the employer has not maintained or retained adequate records
5 documenting hours worked by the employee and earned sick leave
6 taken by the employee or does not allow the department access to
7 the records, it shall be presumed that the employer has failed to
8 provide the earned sick leave, absent clear and convincing evidence
9 otherwise. In addition, the penalties provided by the “New Jersey
10 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)
11 for violations of the requirements of that act regarding the
12 maintaining and disclosure of records shall apply to violations of
13 the requirements of this section.
14

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

35 b. The commissioner shall advise any employee who files a
36 complaint pursuant to this section and is covered by a collective
37 bargaining agreement, that if the agreement provides for earned sick
38 leave, the employee may have a right to pursue a grievance under
39 the terms of the agreement.
40

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

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

3 (1) Requiring an employer to reduce, or justifying an employer
4 in reducing, rights or benefits provided by the employer pursuant to
5 an employer policy or collective bargaining agreement which are
6 more favorable to employees than those required by this act or
7 which provide rights or benefits to employees not covered by this
8 act;

9 (2) Preventing or prohibiting the employer from agreeing,
10 through a collective bargaining agreement or employer policy, to
11 provide rights or benefits which are more favorable to employees
12 than those required by this act or to provide rights or benefits to
13 employees not covered by this act; or

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

17

18 9. The commissioner shall adopt rules and regulations pursuant
19 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
20 1 et seq.) to effectuate the purposes of this act.

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22 10. This act shall take effect on the 120th day following
23 enactment.

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STATEMENT

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

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

43 1. Time needed for diagnosis, care, or treatment of, or recovery
44 from, an employee's mental or physical illness, injury or other
45 adverse health condition, or for preventive medical care for the
46 employee;

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

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

9 The bill prohibits retaliatory personnel actions against an
10 employee for the use or requested use of earned sick leave or for
11 filing of a complaint for an employer violation. The bill sets
12 requirements for record keeping and for notifying workers of their
13 rights under the bill. It provides for penalties and other remedies
14 for non-compliance with the requirements of the bill, based on the
15 penalties and remedies for non-compliance with the "New Jersey
16 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

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