

ASSEMBLY, No. 1446

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

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**Assemblymen Diegnan, Benson, Assemblywoman Jasey, Assemblymen
Giblin, Caputo, Holley, Assemblywomen Oliver, Quijano and Muoio**

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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 "Benefit year" means the period of 12 consecutive months
9 established by an employer in which an employee shall accrue and
10 use earned sick leave as provided pursuant to section 2 of this act,
11 provided that once the starting date of the benefit year is established
12 by the employer it shall not be changed unless the employer notifies
13 the commissioner of the change in accordance with regulations
14 promulgated pursuant to this act. The commissioner shall impose a
15 benefit year on any employer that the commissioner determines is
16 changing the benefit year at times or in ways that prevent the
17 accrual or use of earned sick leave by an employee.

18 "Certified Domestic Violence Specialist" means a person who
19 has fulfilled the requirements of certification as a Domestic
20 Violence Specialist established by the New Jersey Association of
21 Domestic Violence Professionals.

22 "Child" means a biological, adopted, or foster child, stepchild or
23 legal ward of an employee, child of a domestic partner or civil
24 union partner of the employee, if the child is less than 19 years of
25 age, or is 19 years of age or older but incapable of self-care because
26 of mental or physical impairment.

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

29 "Commissioner" means the Commissioner of Labor and
30 Workforce Development.

31 "Department" means the Department of Labor and Workforce
32 Development.

33 "Designated domestic violence agency" means a county-wide
34 organization with a primary purpose to provide services to victims
35 of domestic violence, and which provides services that conform to
36 the core domestic violence services profile as defined by the
37 Division of Child Protection and Permanency in the Department of
38 Children and Families and is under contract with the division for
39 the express purpose of providing the services.

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

42 "Domestic or sexual violence" means stalking, any sexually
43 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
44 27.26), or domestic violence as defined in section 3 of P.L.1991,
45 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-6).

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

48 "Employee" does not include an employee performing service in the

1 construction industry that is under contract pursuant to a collective
2 bargaining agreement.

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

6 "Family member" means a child, grandchild, sibling, spouse,
7 domestic partner, civil union partner, parent, or grandparent of an
8 employee, or a spouse, domestic partner, or civil union partner of a
9 parent or grandparent of the employee, or a sibling of a spouse,
10 "domestic partner, or civil union partner of the employee. "Family
11 member" shall also mean, if an employee does not have a spouse,
12 domestic partner, or civil union partner, any one person designated
13 by the employee for whom the employee may use earned sick leave
14 to care for as provided in paragraphs (2) and (3) of subsection a. of
15 section 3 of this act, and this designation may be changed by the
16 employee once annually, prior to the start of the preceding benefit
17 year.

18 "Health care professional" means any person licensed under
19 federal, State, or local law, or the laws of a foreign nation, to
20 provide health care services, or any other person who has been
21 authorized to provide health care by a licensed health care
22 professional, including but not limited to doctors, nurses and
23 emergency room personnel.

24 "Parent" means a biological, adoptive, or foster parent,
25 stepparent, or legal guardian of an employee or of the employee's
26 spouse, domestic partner, or civil union partner, or a person who
27 stood in loco parentis of the employee or the employee's spouse,
28 domestic partner, or civil union partner when the employee, spouse
29 or partner was a minor child.

30 "Retaliatory personnel action" means denial of any right
31 guaranteed under this act and any threat, constructive discharge,
32 suspension, demotion, unfavorable reassignment, refusal to
33 promote, disciplinary action, sanction, or any other adverse action
34 against an employee.

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

37 "Small employer" means an employer who had, on average,
38 fewer than 10 employees during the preceding calendar year, or
39 during the current year if the employer had no employees during the
40 preceding calendar year. Periods of time in which the employer had
41 no employees shall not be considered in determining the average
42 number of employees. In determining whether an employer is a
43 small employer, the number of employees shall include all
44 individuals working for compensation on a full-time, part-time or
45 temporary basis, including individuals made available to work at a
46 workplace of the employer through a temporary help services firm.

47 "Spouse" means a husband or wife.

1 2. a. Each employer shall provide earned sick leave to each
2 employee working for the employer in the State. For every 30 hours
3 worked, the employee shall accrue one hour of earned sick leave.
4 The employer shall not be required to permit the employee to
5 accrue at any one time, or carry forward from one benefit year to
6 the next, more than 40 hours of earned sick leave if the employer is
7 a small employer, or more than 72 hours of earned sick leave if the
8 employer is not a small employer. Unless the employee has accrued
9 earned sick leave prior to the effective date of this act, the earned
10 sick leave shall begin to accrue on the effective date of this act for
11 any employee hired before the effective date of this act and the
12 employee shall be eligible to use the earned sick leave beginning on
13 the 90th day after the hiring of the employee, and if hired after the
14 effective date of this act, the earned sick leave shall begin to accrue
15 upon the date of hire and the employee shall be eligible to use the
16 earned sick leave beginning on the 90th day after the hiring of the
17 employee, unless the employer agrees to an earlier date. The
18 employee may use earned sick leave as it is accrued.

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

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

29 d. Upon the mutual consent of the employee and employer, an
30 employee may voluntarily choose to work additional hours or shifts
31 during the same or following pay period, in lieu of hours or shifts
32 missed, but shall not be required to use accrued earned sick leave.
33 An employer may not require, as a condition of an employee's using
34 earned sick leave, that the employee search for or find a
35 replacement worker to cover the hours during which the employee
36 is using earned sick leave.

37 e. If an employee is transferred to a separate division, entity, or
38 location, but remains employed by the same employer, then the
39 employee shall be entitled to all earned sick leave accrued at the
40 prior division, entity, or location, and shall be entitled to use the
41 accrued earned sick leave as provided in this act. If an employee is
42 terminated, laid off, furloughed, or otherwise separated from
43 employment with the employer, any unused accrued earned sick
44 leave shall be reinstated upon the re-hiring or reinstatement of the
45 employee to that employment, within six months of termination,
46 being laid off or furloughed, or separation, and prior employment
47 with the employer shall be counted towards meeting the eligibility
48 requirements set forth in this section.

1 3. a. An employer shall permit an employee to use the earned
2 sick leave accrued pursuant to this act for any of the following:
3 (1) Time needed for diagnosis, care, or treatment of, or recovery
4 from, an employee's mental or physical illness, injury or other
5 adverse health condition, or for preventive medical care for the
6 employee;
7 (2) Time needed for the employee to aid or care for a family
8 member of the employee during diagnosis, care, or treatment of, or
9 recovery from, the family member's mental or physical illness,
10 injury or other adverse health condition, or during preventive
11 medical care for the family member;
12 (3) Absence necessary due to circumstances resulting from the
13 employee, or a family member of the employee, being a victim of
14 domestic or sexual violence, if the leave is to allow the employee to
15 obtain for the employee or the family member: medical attention
16 needed to recover from physical or psychological injury or
17 disability caused by domestic or sexual violence; services from a
18 designated domestic violence agency or other victim services
19 organization; psychological or other counseling; relocation; or legal
20 services, including obtaining a restraining order or preparing for, or
21 participating in, any civil or criminal legal proceeding related to the
22 domestic or sexual violence; or
23 (4) Time during which the employee is not able to work because
24 of a closure of the employee's workplace, or the school or place of
25 care of a child of the employee, by order of a public official due to
26 an epidemic or other public health emergency, or because of the
27 issuance by a public health authority of a determination that the
28 presence in the community of the employee, or a member of the
29 employee's family in need of care by the employee, would
30 jeopardize the health of others.
31 b. If an employee's need to use earned sick leave is foreseeable,
32 an employer may require advance notice, not to exceed seven days
33 prior to the date the leave is to begin, of the intention to use the
34 leave and its expected duration, and shall make a reasonable effort
35 to schedule the use of earned sick leave in a manner that does not
36 unduly disrupt the operations of the employer. If the reason for the
37 leave is not foreseeable, an employer may require an employee to
38 give notice of the intention as soon as practicable. For earned sick
39 leave of three or more consecutive days, an employer may require
40 reasonable documentation that the leave is being taken for the
41 purpose permitted under subsection a. of this section. If the leave is
42 permitted under paragraph (1) or (2) of subsection a. of this section,
43 documentation signed by a health care professional who is treating
44 the employee or the family member of the employee indicating the
45 need for the leave and, if possible, number of days of leave, shall be
46 considered reasonable documentation. If the leave is permitted
47 under paragraph (3) of subsection a. of this section because of
48 domestic or sexual violence, any of the following shall be

1 considered reasonable documentation of the domestic or sexual
2 violence: medical documentation; a law enforcement agency record
3 or report; a court order; documentation that the perpetrator of the
4 domestic or sexual violence has been convicted of a domestic or
5 sexual violence offense; certification from a certified Domestic
6 Violence Specialist or a representative of a designated domestic
7 violence agency or other victim services organization; or other
8 documentation or certification provided by a social worker,
9 counselor, member of the clergy, shelter worker, health care
10 professional, attorney, or other professional who has assisted the
11 employee or family member in dealing with the domestic or sexual
12 violence. If the leave is permitted under paragraph (4) of
13 subsection a. of this section, a copy of the order of the public
14 official or the determination by the health authority shall be
15 considered reasonable documentation. An employer who chooses to
16 require documentation for earned sick leave shall pay all out-of-
17 pocket expenses the employee incurs to obtain the documentation.

18 c. Nothing in this act shall be deemed to require an employer to
19 provide earned sick leave for an employee's leave for purposes
20 other than those identified in this section, or prohibit the employer
21 from taking disciplinary action against an employee who uses
22 earned sick leave for purposes other than those identified in this
23 section. An employer may provide an offer to an employee for a
24 payment of unused earned sick leave in the final month of the
25 employer's benefit year. The employee shall choose, no later than
26 10 calendar days from the date of the employer's offer, whether to
27 accept a payment or decline a payment. If the employee agrees to
28 receive a payment, the employee shall choose a payment for the full
29 amount of unused earned sick leave or for 50 percent of the amount
30 of unused earned sick leave. The payment amount shall be based on
31 the same rate of pay that the employee earns at the time of the
32 payment. If the employee declines a payment for unused earned
33 sick leave, or agrees to a payment for 50 percent of the amount of
34 unused sick leave, the employee shall be entitled to carry forward
35 any unused or unpaid earned sick leave to the proceeding benefit
36 year as provided pursuant to subsection a. of section 2 of this act. If
37 the employee agrees to a payment for the full amount of unused
38 earned sick leave, the employee shall not be entitled to carry
39 forward any earned sick leave to the proceeding benefit year
40 pursuant to subsection a. of section 2 of this act. Unless an
41 employer policy or collective bargaining agreement provides for the
42 payment of accrued earned sick leave upon termination, resignation,
43 retirement or other separation from employment, an employee shall
44 not be entitled under this section to payment of unused earned sick
45 leave upon the separation from employment.

46 d. Any information an employer possesses regarding the health
47 of an employee or any family member of the employee or domestic
48 or sexual violence affecting an employee or employee's family

1 member shall be treated as confidential and not disclosed except to
2 the affected employee or with the written permission of the affected
3 employee.

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

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

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

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

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

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

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

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

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

1 to employees than those required by this act or which provide rights
2 or benefits to employees not covered by this act.

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

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

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

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

19 (4) Superseding any law providing collective bargaining rights
20 for employees, or in any way reducing, diminishing, or adversely
21 affecting those collective bargaining rights, or in any way reducing,
22 diminishing, or affecting the obligations of employers under those
23 laws.

24 c. With respect to employees covered by a collective
25 bargaining agreement in effect at the time of the effective date of
26 this act, no provision of this act shall apply until the expiration of
27 the collective bargaining agreement.

28

29 9. The commissioner shall adopt rules and regulations pursuant
30 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
31 1 et seq.) to effectuate the purposes of this act.

32

33 10. This act shall take effect on the 120th day following
34 enactment.

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36

37

STATEMENT

38

39 This bill requires each employer to provide earned sick leave to
40 each employee it employs in the State, except for construction
41 employees that are under contract pursuant to a collective bargaining
42 agreement. The employee accrues one hour of earned sick leave for
43 every 30 hours worked. The employer is not required to permit the
44 employee to accrue at any one time, or carry forward from one year to
45 the next, more than 40 hours of earned sick leave if the employer has
46 less than 10 employees in the State, or more than 72 hours of earned
47 sick leave if the employer has 10 or more employees. Unless the
48 employee accrued earned sick leave with the employer before the

1 effective date of the bill, for an employee hired prior to the effective
2 date of the bill, the leave accrues beginning on that date and the
3 employee may use the leave beginning on the 90th day after the
4 employee is hired, and for an employee hired after the effective date of
5 the bill, the leave accrues beginning on the date of hire and the
6 employee may use the leave beginning on the 90th day after the
7 employee is hired, unless the employer agrees to an earlier date.

8 The bill provides that an employer is in compliance with the
9 requirements of the bill with respect to providing earned sick leave if
10 the employer offers any other fully paid leave that may be used for the
11 same purposes provided by the bill in the same manner provided by
12 the bill, and is accrued at a rate equal to or greater than the rate
13 required by the bill. The employer is required to pay the employee for
14 earned sick leave at the same rate of pay with the same benefits as the
15 employee normally earns, except that the pay rate may not be less than
16 the State minimum wage. If an employee is transferred to a separate
17 division, entity, or location, but remains employed by the same
18 employer, the employee is entitled to retain and use all earned sick
19 leave accrued at the prior division, entity, or location.

20 Earned sick leave may be used for:

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

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

28 3. Absence needed due to circumstances resulting from the
29 employee or a family member being a victim of domestic or sexual
30 violence, if the leave is to obtain medical attention, counseling,
31 relocation, legal or other services.

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

40 The bill specifies that it is intended to set minimum standards for
41 earned sick leave, but not to prevent any employer policies, collective
42 bargaining agreements or other laws or ordinances which set higher
43 standards. With respect to employees covered by a collective
44 bargaining agreement in effect at the time of the effective date of the
45 bill, no provision of the bill will apply until the expiration of the
46 collective bargaining agreement.