

[Third Reprint]

SENATE, No. 799

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

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

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

As amended by the Senate on June 23, 2016.



(Sponsorship Updated As Of: 2/12/2016)

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 use
10 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 by
12 the employer it shall not be changed unless the employer notifies the
13 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 accrual
17 or use of earned sick leave by an employee.

18 "Certified Domestic Violence Specialist" means a person who has
19 fulfilled the requirements of certification as a Domestic Violence
20 Specialist established by the New Jersey Association of Domestic
21 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 union
24 partner of the employee, if the child is less than 19 years of age, or is
25 19 years of age or older but incapable of self-care because of mental or
26 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 of
35 domestic violence, and which provides services that conform to the
36 core domestic violence services profile as defined by the Division of
37 Child Protection and Permanency in the Department of Children and
38 Families and is under contract with the division for the express
39 purpose of providing the services.

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

42 "Domestic or sexual violence" means stalking, any sexually violent
43 offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26), or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted March 7, 2016.

²Senate floor amendments adopted March 14, 2016.

³Senate floor amendments adopted June 23, 2016.

1 domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-
2 19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

3 "Employee" means an individual engaged in service to an
4 employer in the business of the employer for compensation.
5 "Employee" does not include an employee performing service in the
6 construction industry that is under contract pursuant to a collective
7 bargaining agreement.

8 "Employer" means³, for the purposes of sections 2 through 9 of
9 this act,³ any person, firm, business, educational institution, nonprofit
10 agency, corporation, limited liability company or other entity that
11 employs employees in the State³, other than a small employer³.

12 "Family member" means a child, grandchild, sibling, spouse,
13 domestic partner, civil union partner, parent, or grandparent of an
14 employee, or a spouse, domestic partner, or civil union partner of a
15 parent or grandparent of the employee, or a sibling of a spouse,
16 domestic partner, or civil union partner of the employee.

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

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

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

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

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

45 "Spouse" means a husband or wife.

46

47 2. a. Each employer shall provide earned sick leave to each
48 employee working for the employer in the State. For every 30 hours

1 worked, the employee shall accrue one hour of earned sick leave,
2 except that an employer may provide an employee with the full
3 complement of earned sick leave for a benefit year, as required under
4 this section, on the first day of each benefit year in accordance with
5 subsection c. or subsection d. of section 3 of this act. The employer
6 shall not be required to permit the employee to accrue at any one time,
7 or carry forward from one benefit year to the next, ³~~more than 40~~
8 hours of earned sick leave if the employer is a small employer, or³
9 more than 72 hours of earned sick leave ³~~if the employer is not a~~
10 small employer³. Unless the employee has accrued earned sick leave
11 prior to the effective date of this act, the earned sick leave shall begin
12 to accrue on the effective date of this act for any employee ³~~who is~~³
13 hired ³~~and commences employment~~³ before the effective date of this
14 act and the employee shall be eligible to use the earned sick leave
15 beginning on the 100th calendar day after ³~~the hiring of~~³ the
16 employee ³~~commences employment~~³, and if ³~~hired~~ the employment
17 commences³ after the effective date of this act, the earned sick leave
18 shall begin to accrue upon the date ³~~of hire~~ that employment
19 commences³ and the employee shall be eligible to use the earned sick
20 leave beginning on the 100th calendar day after ³~~the hiring of~~³ the
21 employee ³~~commences employment~~³, unless the employer agrees to an
22 earlier date. The employee may use earned sick leave as it is accrued.

23 b. An employer shall be in compliance with this section if the
24 employer offers ²~~any other fully paid leave that~~ paid time off which
25 is fully paid and² may be used for the purposes of section 3 of this act
26 in the manner provided by this act, and is accrued at a rate equal to or
27 greater than the rate described in this section.

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

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

41 e. If an employee is transferred to a separate division, entity, or
42 location, but remains employed by the same employer, then the
43 employee shall be entitled to all earned sick leave accrued at the prior
44 division, entity, or location, and shall be entitled to use the accrued
45 earned sick leave as provided in this act. If an employee is terminated,
46 laid off, furloughed, or otherwise separated from employment with the

1 employer, any unused accrued earned sick leave shall be reinstated
2 upon the re-hiring or reinstatement of the employee to that
3 employment, within six months of termination, being laid off or
4 furloughed, or separation, and prior employment with the employer
5 shall be counted towards meeting the eligibility requirements set forth
6 in this section.

7

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

10 (1) Time needed for diagnosis, care, or treatment of, or recovery
11 from, an employee's mental or physical illness, injury or other
12 adverse health condition, or for preventive medical care for the
13 employee;

14 (2) Time needed for the employee to aid or care for a family
15 member of the employee during diagnosis, care, or treatment of, or
16 recovery from, the family member's mental or physical illness,
17 injury or other adverse health condition, or during preventive
18 medical care for the family member;

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

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

38 b. If an employee's need to use earned sick leave is foreseeable,
39 an employer may require advance notice, not to exceed seven
40 calendar days prior to the date the leave is to begin, of the intention
41 to use the leave and its expected duration, and shall make a
42 reasonable effort to schedule the use of earned sick leave in a
43 manner that does not unduly disrupt the operations of the employer.
44 If the reason for the leave is not foreseeable, an employer may
45 require an employee to give notice of the intention as soon as
46 practicable. For earned sick leave of three or more consecutive
47 days, an employer may require reasonable documentation that the
48 leave is being taken for the purpose permitted under subsection a. of

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

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

1 d. If an employer foregoes the accrual process for earned sick
2 leave hours pursuant to subsection a. of section 2 of this act and
3 provides an employee with the full complement of earned sick leave
4 for a benefit year on the first day of each benefit year, then the
5 employer shall either provide to the employee a payment for the full
6 amount of unused earned sick leave in the final month of the
7 employer's benefit year or carry forward any unused sick leave to
8 the next benefit year. The employer may pay the employee the full
9 amount of unused earned sick leave in the final month of a benefit
10 year pursuant to this subsection d. only if the employer forgoes,
11 with respect to that employee, the accrual process for earned sick
12 leave during the next benefit year. Unless an employer policy or
13 collective bargaining agreement provides for the payment of
14 accrued earned sick leave upon termination, resignation, retirement
15 or other separation from employment, an employee shall not be
16 entitled under this section to payment of unused earned sick leave
17 upon the separation from employment.

18 e. Any information an employer possesses regarding the health
19 of an employee or any family member of the employee or domestic
20 or sexual violence affecting an employee or employee's family
21 member shall be treated as confidential and not disclosed except to
22 the affected employee or with the written permission of the affected
23 employee.

24
25 4. a. No employer shall take retaliatory personnel action or
26 discriminate against an employee because the employee requests or
27 uses earned sick leave either in accordance with this act or the
28 employer's own earned sick leave policy, as the case may be, or
29 files a complaint with the commissioner alleging the employer's
30 violation of any provision of this act, or informs any other person of
31 their rights under this act. No employer shall count earned sick
32 leave taken under this act as an absence that may result in the
33 employee being subject to discipline, discharge, demotion,
34 suspension, a loss or reduction of pay, or any other adverse action.

35 b. There shall be a rebuttable presumption of an unlawful
36 retaliatory personnel action under this section whenever an
37 employer takes adverse action against an employee within 90 days
38 of when that employee: files a complaint with the department or a
39 court alleging a violation of any provision of this section; informs
40 any person about an employer's alleged violation of this section;
41 cooperates with the department or other persons in the investigation
42 or prosecution of any alleged violation of this section; opposes any
43 policy, practice, or act that is unlawful under this section; or
44 informs any person of his or her rights under this section.

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

47 d. Any violator of the provisions of this section shall be subject
48 to relevant ¹administrative¹ penalties ¹**[and remedies]**¹ provided by

1 the “New Jersey State Wage and Hour Law,” P.L.1966, c.113
2 (C.34:11-56a et seq.), including the ¹administrative¹ penalties ¹and
3 remedies¹ provided by section 25 of that act (C.34:11-56a24) for
4 discharge or other discrimination.

5
6 5. Any failure of an employer to make available or pay earned
7 sick leave as required by this act, or any other violation of this act,
8 shall be regarded as a failure to meet the wage payment
9 requirements of the “New Jersey State Wage and Hour Law,”
10 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
11 as the case may be, and ¹all remedies,¹ administrative¹ penalties
12 ¹or other measures¹ provided by that act for failure to pay wages
13 or other violations of that act shall be applicable, including, but not
14 limited to, ¹administrative¹ penalties provided pursuant to sections
15 23 and 25 of that act (C.34:11-56a22 and 34:11-56a24), and civil
16 actions by employees pursuant to section 26 of that act (C.34:11-
17 56a25), except that an award to an employee in a civil act shall
18 include, in addition to the amount provided pursuant to section 26
19 of that act (C.34:11-56a25), any actual damages suffered by the
20 employee as the result of the violation plus an equal amount of
21 liquidated damages.

22
23 6. Employers shall retain records documenting hours worked
24 by employees and earned sick leave taken by employees, for a
25 period of five years, and shall, upon demand, allow the department
26 access to those records to monitor compliance with the
27 requirements of this act. If an employee makes a claim that the
28 employer has failed to provide earned sick leave required by this act
29 and the employer has not maintained or retained adequate records
30 documenting hours worked by the employee and earned sick leave
31 taken by the employee or does not allow the department access to
32 the records, it shall be presumed that the employer has failed to
33 provide the earned sick leave, absent clear and convincing evidence
34 otherwise. In addition, the ¹administrative¹ penalties provided by
35 the “New Jersey State Wage and Hour Law,” P.L.1966, c.113
36 (C.34:11-56a et seq.) for violations of the requirements of that act
37 regarding the maintaining and disclosure of records shall apply to
38 violations of the requirements of this section.

39
40 7. a. Employers shall provide notification, in a form issued by
41 the commissioner, to employees of their rights under this act,
42 including the amount of earned sick leave to which they are entitled
43 and the terms of its use, and remedies provided by this act to
44 employees if an employer fails to provide the required benefits or
45 retaliates against employees exercising their rights under this act.
46 Each covered employer shall conspicuously post the notification in
47 a place or places accessible to all employees in each of the

1 employer's workplaces. The employer shall also provide each
2 employee employed by the employer with a written copy of the
3 notification: not later than 30 days after the form of the notification
4 is issued; at the time of the employee's hiring, if the employee is
5 hired after the issuance; and at any time, when first requested by the
6 employee. The commissioner shall make the notifications available
7 in English, in Spanish, and any other language that the
8 commissioner determines is the first language of a significant
9 number of workers in the State and the employer shall use the
10 notification in English, Spanish or any other language for which the
11 commissioner has provided notifications and which is the first
12 language of a majority of the employer's workforce.

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

18

19 8. a. The governing body of a county or municipality shall not,
20 after the effective date of this act, adopt any ordinance, resolution,
21 law, rule, or regulation regarding earned sick leave. The provisions
22 of this act shall preempt any ordinance, resolution, law, rule, or
23 regulation regarding earned sick leave unless adopted by the
24 governing body of a county or municipality prior to the effective
25 date of this act. This act shall not be construed to preempt, limit, or
26 otherwise affect the applicability of any provision of an ordinance,
27 resolution, law, rule, or regulation regarding earned sick leave
28 adopted by a county or municipality prior to the effective date of
29 this act that provides rights or benefits to employees which are
30 more favorable to employees than those required by this act or that
31 provides rights or benefits to employees not covered by this act, but
32 shall preempt any provision which is less favorable to employees
33 than is required by this act.

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

36 (1) Requiring an employer to reduce, or justifying an employer
37 in reducing, rights or benefits provided by the employer pursuant to
38 an employer policy or collective bargaining agreement which are
39 more favorable to employees than those required by this act or
40 which provide rights or benefits to employees not covered by this
41 act;

42 (2) Preventing or prohibiting the employer from agreeing,
43 through a collective bargaining agreement or employer policy, to
44 provide rights or benefits which are more favorable to employees
45 than those required by this act or to provide rights or benefits to
46 employees not covered by this act;

- 1 (3) Prohibiting an employer from establishing a policy whereby
2 an employee may donate unused accrued earned sick leave to
3 another employee or other employees; or
- 4 (4) Superseding any law providing collective bargaining rights
5 for employees, or in any way reducing, diminishing, or adversely
6 affecting those collective bargaining rights, or in any way reducing,
7 diminishing, or affecting the obligations of employers under those
8 laws.
- 9 c. With respect to employees covered by a collective
10 bargaining agreement in effect at the time of the effective date of
11 this act, no provision of this act shall apply until the expiration of
12 the collective bargaining agreement.
- 13 d. A public employer shall not be subject of the provisions of
14 this act with respect to its employees if the employer is subject to
15 the provisions of any State statute or regulation regarding earned
16 sick leave which are more favorable to those employees than the
17 provisions of this act.
- 18
- 19 9. The commissioner shall adopt rules and regulations pursuant
20 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
21 1 et seq.) to effectuate the purposes of this act.
- 22
- 23 10. This act shall take effect on the 120th day following
24 enactment.