SENATE, No. 2453

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS
Concerns earned sick leave benefits.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning earned sick leave benefits and amending P.L.2018, c.10.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2018, c.10 (C.34:11D-1) is amended to read as follows:
   1. For the purposes of this act:
   "Benefit year" means the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave as provided pursuant to section 2 of this act, provided that once the starting date of the benefit year is established by the employer it shall not be changed unless the employer notifies the commissioner of the change in accordance with regulations promulgated pursuant to this act. The commissioner shall impose a benefit year on any employer that the commissioner determines is changing the benefit year at times or in ways that prevent the accrual or use of earned sick leave by an employee.
   "Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.
   "Child" means a biological, adopted, or foster child, stepchild or legal ward of an employee, child of a domestic partner or civil union partner of the employee.
   "Civil union" means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).
   "Commissioner" means the Commissioner of Labor and Workforce Development.
   "Department" means the Department of Labor and Workforce Development.
   "Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the Department of Children and Families and is under contract with the division for the express purpose of providing the services.
   "Domestic or sexual violence" means stalking, any sexually violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26), or domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).
   "Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

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.
"Employee" means an individual engaged in service to an employer in the business of the employer for compensation. "Employee" does not include an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement, or a per diem health care employee, or a public employee who is provided with sick leave with full pay pursuant to any other law, rule, or regulation of this State. "Employee" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs employees in the State, including a temporary help service firm. In the case of a temporary help service firm placing an employee with client firms, earned sick leave shall accrue on the basis of the total time worked on assignment with the temporary help service firm, not separately for each client firm to which the employee is assigned. "Employer" does not include a public employer that is required to provide its employees with sick leave with full pay pursuant to any other law, rule or regulation of this State.

“Essential employee” means an employee in the public or private sector who, during a state of emergency:

(1) is a public safety worker or first responder, including any fire, police or other emergency responders;

(2) is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;

(3) performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or

(4) is any other employee deemed an essential employee by the public authority declaring the state of emergency.

If the state of emergency does not apply to the entire State, an employee shall be regarded as an essential employee only if the employee is working in the area subject to the state of emergency.

"Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

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

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

"Per diem health care employee" means any:

1. health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey Department of Health;
2. any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; or
3. any first aid, rescue or ambulance squad member employed by a hospital system.

An employee listed in paragraphs (1), (2), and (3) of this definition shall be considered a per diem health care employee if that employee:

1. works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;
2. works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; and
3. either:
   a. has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under this act under the terms of employment; or
   b. has waived earned sick leave benefits as provided under this act under terms of employment for alternative benefits or consideration.

"Per diem health care employee" shall not include any individual who is certified as a homemaker-home health aide.

"Retaliatory personnel action" means denial of any right guaranteed under this act and any threat, discharge, including a constructive discharge, suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee's family, or any other adverse action against an employee.

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

"Spouse" means a husband or wife.

"State of emergency" means a natural or human-made disaster or emergency, including an epidemic or other health emergency, for
which a state of emergency has been declared by the President of the United States, the Governor, a municipal emergency management coordinator, or other public authority permitted by law to declare a state of emergency.

(cf: P.L.2018, c.10, s.1)

2. Section 2 of P.L.2018, c.10 (C.34:11D-2) is amended to read as follows:

2. a. Each employer shall provide earned sick leave to each employee working for the employer in the State. For every 30 hours worked, the employee shall accrue one hour of earned sick leave, except that an employer may provide an employee with the full complement of earned sick leave for a benefit year, as required under this section, on the first day of each benefit year in accordance with subsection c. or subsection d. of section 3 of this act. The employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours, or, after March 1, 2020, more than 56 hours, of earned sick leave, except that if an employee works as an essential employee during a state of emergency occurring during a benefit year of the employee and uses earned sick leave during the benefit year and during or after the state of emergency, the employee shall be eligible for an amount of earned sick leave of up to 120 hours for that year, which shall be in addition to any hours of earned sick leave accrued by the employee, provided that none of the 120 hours shall be carried forward to the following benefit year. Unless the employee has accrued earned sick leave prior to the effective date of this act, the earned sick leave shall begin to accrue on the effective date of this act for any employee who is hired and commences employment before the effective date of this act and the employee shall be eligible to use the earned sick leave beginning [beginning on the 120th calendar day] immediately after the employee commences employment, and if the employment commences after the effective date of this act, the earned sick leave shall begin to accrue upon the date that employment commences and the employee shall be eligible to use the earned sick leave beginning [on the 120th calendar day] immediately after the employee commences employment[, unless the employer agrees to an earlier date]. The employee may subsequently use earned sick leave as soon as it is accrued.

b. An employer shall be in compliance with this section if the employer offers paid time off, which is fully paid and shall include, but is not limited to personal days, vacation days, and sick days, and may be used for the purposes of section 3 of this act in the manner provided by this act, and is accrued at a rate equal to or greater than the rate described in this section.

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

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

e. If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, then the employee shall be entitled to all earned sick leave accrued at the prior division, entity, or location, and shall be entitled to use the accrued earned sick leave as provided in this act. If an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer, any unused accrued earned sick leave shall be reinstated upon the re-hiring or reinstatement of the employee to that employment, within six months of termination, being laid off or furloughed, or separation, and prior employment with the employer shall be counted towards meeting the eligibility requirements set forth in this section. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all of the earned sick leave they accrued when employed by the original employer, and are entitled to use the earned sick leave previously accrued immediately.

f. An employer may choose the increments in which its employees may use earned sick leave, provided that the largest increment of earned sick leave that an employee may be required to use for each shift for which earned sick leave is used shall be the number of hours the employee was scheduled to work during that shift.

(cf: P.L.2018, c.10, s.2)

3. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read as follows:

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

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

(2) time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;
(3) absence necessary due to circumstances resulting from the
employee, or a family member of the employee, being a victim of
domestic or sexual violence, if the leave is to allow the employee to
obtain for the employee or the family member: medical attention
needed to recover from physical or psychological injury or disability
caused by domestic or sexual violence; services from a designated
domestic violence agency or other victim services organization;
psychological or other counseling; relocation; or legal services,
including obtaining a restraining order or preparing for, or
participating in, any civil or criminal legal proceeding related to the
domestic or sexual violence;

(4) time during which the employee is not able to work because
of:

(a) a closure of the employee's workplace, or the school or place
of care of a child of the employee by order of a public official or
because of a state of emergency declared by the Governor, due to an
epidemic or other public health emergency:

(b) the declaration of a state of emergency by the Governor, or
the issuance by a health care provider or the Commissioner of Health
or other public health authority of a determination that the presence
in the community of the employee, or a member of the employee's
family in need of care by the employee, would jeopardize the health
of others;

(c) during a state of emergency declared by the Governor, or upon
the recommendation, direction, or order of a healthcare provider or
the Commissioner of Health or other authorized public official, the
employee undergoes isolation or quarantine, or cares for a family
member in quarantine, as a result of suspected exposure to a
communicable disease and a finding by the provider or authority that
the presence in the community of the employee or family member
would jeopardize the health of others; or

(5) time needed by the employee in connection with a child of the
employee to attend a school-related conference, meeting, function or
other event requested or required by a school administrator, teacher,
or other professional staff member responsible for the child's
education, or to attend a meeting regarding care provided to the child
in connection with the child's health conditions or disability; or

(6) bereavement time, including time attending a funeral, for the
death of family member of the employee of not more than two days
taken at any time within the one-month period immediately following
the death.

b. If an employee's need to use earned sick leave is foreseeable,
an employer may require advance notice, not to exceed seven
calendar days prior to the date the leave is to begin, of the intention
to use the leave and its expected duration, and shall make a
reasonable effort to schedule the use of earned sick leave in a manner
that does not unduly disrupt the operations of the employer. If the
reason for the leave is not foreseeable, an employer may require an
employee to give notice of the intention as soon as practicable, if the
employer has notified the employee of this requirement. Employers
may prohibit employees from using foreseeable earned sick leave on
certain dates, and require reasonable documentation if sick leave that
is not foreseeable is used during those dates. For earned sick leave
of [three or] more than five consecutive days, an employer may
require reasonable documentation that the leave is being taken for the
purpose permitted under subsection a. of this section. If the leave is
permitted under paragraph (1) or (2) of subsection a. of this section,
documentation [signed] provided by a health care professional who
is treating the employee or the family member of the employee
indicating the need for the leave and, if possible, number of days of
leave, shall be considered reasonable documentation. For the
purposes of this documentation, any evaluation and determination of
treatment needed for the health condition of the employee or family
member may be conducted by telephone, video or other remote
means deemed appropriate by the health care professional if isolation
of the employee or family member is found by the professional to be
needed to reduce health hazards to others, including health providers
or caregivers. If the leave is permitted under paragraph (3) of
subsection a. of this section because of domestic or sexual violence,
any of the following shall be considered reasonable documentation
of the domestic or sexual violence: medical documentation; a law
enforcement agency record or report; a court order; documentation
that the perpetrator of the domestic or sexual violence has been
convicted of a domestic or sexual violence offense; certification from
a certified Domestic Violence Specialist or a representative of a
designated domestic violence agency or other victim services
organization; or other documentation or certification provided by a
social worker, counselor, member of the clergy, shelter worker,
health care professional, attorney, or other professional who has
assisted the employee or family member in dealing with the domestic
or sexual violence. If the leave is permitted under paragraph (4) of
subsection a. of this section, a copy of the order of the public official
or the determination by the health authority shall be considered
reasonable documentation.

c. Nothing in this act shall be deemed to require an employer to
provide earned sick leave for an employee's leave for purposes other
than those identified in this section, or prohibit the employer from
taking disciplinary action against an employee who uses earned sick
leave for purposes other than those identified in this section. An
employer may provide an offer to an employee for a payment of
unused earned sick leave in the final month of the employer's benefit
year. The employee shall choose, no later than 10 calendar days from
the date of the employer's offer, whether to accept a payment or
decline a payment. If the employee agrees to receive a payment, the
employee shall choose a payment for the full amount of unused
earned sick leave or for 50 percent of the amount of unused earned
sick leave. The payment amount shall be based on the same rate of
pay that the employee earns at the time of the payment. If the
employee declines a payment for unused earned sick leave, or agrees
to a payment for 50 percent of the amount of unused sick leave, the
employee shall be entitled to carry forward any unused or unpaid
earned sick leave to the proceeding benefit year as provided pursuant
to subsection a. of section 2 of this act. If the employee agrees to a
payment for the full amount of unused earned sick leave, the
employee shall not be entitled to carry forward any earned sick leave
to the proceeding benefit year pursuant to subsection a. of section 2
of this act.

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

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

(cf: P.L.2020, c.17, s.1)

4. This act shall take effect immediately.

STATEMENT

The bill make the following modifications in P.L.2018, c.10
(C.34:11D-1 et seq.):

1. Eliminates the exclusion of per diem health care employees
   from the earned sick leave benefits provided by that law.

2. Increases, from 40 to 56, the number of hours of earned sick
   leave a worker may annually accrue and use, and carry forward from
   one year to another, and, if the worker is an essential worker in a
declared state of emergency, provides an additional 120 hours of sick
leave that can be used during and after the state of emergency, but
not carried forward from one year to another.

3. Provides two days of bereavement time, including time
attending a funeral, for the death of a family member of the employe

4. Eliminates the 120-day period after hiring in which an
employee is not eligible to use accrued earned sick leave.

5. Increases, from two days to five days, the period of time after
which an employer may require documentation by a health
professional of the need for leave, and specifies
that, for the purpose of documentation, if isolation is needed to
reduce health hazards, the determination by the professional of the
need for leave may be conducted by telephone, video or other remote
means.