

SENATE, No. 2453

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

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District 29 (Essex)

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Senator Diegnan

SYNOPSIS

Concerns earned sick leave benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/22/2020)

1 AN ACT concerning earned sick leave benefits and amending
2 P.L.2018, c.10.

3

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

6

7 1. Section 1 of P.L.2018, c.10 (C.34:11D-1) is amended to read
8 as follows:

9 1. For the purposes of this act:

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

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

24 "Child" means a biological, adopted, or foster child, stepchild or
25 legal ward of an employee, child of a domestic partner or civil union
26 partner of the employee.

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 or sexual violence" means stalking, any sexually
41 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
42 27.26), or domestic violence as defined in section 3 of P.L.1991,
43 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

44 "Domestic partner" means a domestic partner as defined in section
45 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.

1 "Employee" means an individual engaged in service to an
2 employer in the business of the employer for compensation.
3 "Employee" does not include an employee performing service in the
4 construction industry that is under contract pursuant to a collective
5 bargaining agreement, **【**or a per diem health care employee,**】** or a
6 public employee who is provided with sick leave with full pay
7 pursuant to any other law, rule, or regulation of this State.

8 "Employer" means any person, firm, business, educational
9 institution, nonprofit agency, corporation, limited liability company
10 or other entity that employs employees in the State, including a
11 temporary help service firm. In the case of a temporary help service
12 firm placing an employee with client firms, earned sick leave shall
13 accrue on the basis of the total time worked on assignment with the
14 temporary help service firm, not separately for each client firm to
15 which the employee is assigned. "Employer" does not include a
16 public employer that is required to provide its employees with sick
17 leave with full pay pursuant to any other law, rule or regulation of
18 this State.

19 "Essential employee" means an employee in the public or private
20 sector who, during a state of emergency:

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

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

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

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

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

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

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

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

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

9 **["Per diem health care employee" means any:**

10 (1) health care professional licensed in the State of New Jersey
11 employed by a health care facility licensed by the New Jersey
12 Department of Health;

13 (2) any individual that is in the process of applying to the New
14 Jersey Division of Consumer Affairs for a license to provide health
15 care services who is employed by a health care facility licensed by
16 the New Jersey Department of Health; or

17 (3) any first aid, rescue or ambulance squad member employed
18 by a hospital system.

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

21 (1) works on an as-needed basis to supplement a health care
22 employee, or to replace or substitute for a temporarily absent health
23 care employee;

24 (2) works only when the employee indicates that the employee is
25 available to work, and has no obligation to work when the employee
26 does not indicate availability; and

27 (3) either:

28 (a) has the opportunity for full time or part time employment in
29 their scope of practice under that healthcare provider which offers
30 paid time off benefits greater in length than provided under this act
31 under the terms of employment; or

32 (b) has waived earned sick leave benefits as provided under this
33 act under terms of employment for alternative benefits or
34 consideration.

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

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

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

46 "Spouse" means a husband or wife.

47 "State of emergency" means a natural or human-made disaster or
48 emergency, including an epidemic or other health emergency, for

1 which a state of emergency has been declared by the President of the
2 United States, the Governor, a municipal emergency management
3 coordinator, or other public authority permitted by law to declare a
4 state of emergency.

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

6
7 2. Section 2 of P.L.2018, c.10 (C.34:11D-2) is amended to read
8 as follows:

9 2. a. Each employer shall provide earned sick leave to each
10 employee working for the employer in the State. For every 30 hours
11 worked, the employee shall accrue one hour of earned sick leave,
12 except that an employer may provide an employee with the full
13 complement of earned sick leave for a benefit year, as required under
14 this section, on the first day of each benefit year in accordance with
15 subsection c. or subsection d. of section 3 of this act. The employer
16 shall not be required to permit the employee to accrue or use in any
17 benefit year, or carry forward from one benefit year to the next, more
18 than 40 hours, or, after March 1, 2020, more than 56 hours, of earned
19 sick leave, except that if an employee works as an essential employee
20 during a state of emergency occurring during a benefit year of the
21 employee and uses earned sick leave during the benefit year and
22 during or after the state of emergency, the employee shall be eligible
23 for an amount of earned sick leave of up to 120 hours for that year,
24 which shall be in addition to any hours of earned sick leave accrued
25 by the employee, provided that none of the 120 hours shall be carried
26 forward to the following benefit year. Unless the employee has
27 accrued earned sick leave prior to the effective date of this act, the
28 earned sick leave shall begin to accrue on the effective date of this
29 act for any employee who is hired and commences employment
30 before the effective date of this act and the employee shall be eligible
31 to use the earned sick leave **【beginning on the 120th calendar day】**
32 immediately after the employee commences employment, and if the
33 employment commences after the effective date of this act, the earned
34 sick leave shall begin to accrue upon the date that employment
35 commences and the employee shall be eligible to use the earned sick
36 leave beginning **【on the 120th calendar day】** immediately after the
37 employee commences employment**【,** unless the employer agrees to
38 an earlier date**】**. The employee may subsequently use earned sick
39 leave as soon as it is accrued.

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

46 c. The employer shall pay the employee for earned sick leave at
47 the same rate of pay with the same benefits as the employee normally
48 earns, except that the pay rate shall not be less than the minimum

1 wage required for the employee pursuant to section 5 of P.L.1966,
2 c.113 (C.34:11-56a4).

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

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

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

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

35

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

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

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

44 (2) time needed for the employee to aid or care for a family
45 member of the employee during diagnosis, care, or treatment of, or
46 recovery from, the family member's mental or physical illness, injury
47 or other adverse health condition, or during preventive medical care
48 for the family member;

1 (3) absence necessary due to circumstances resulting from the
2 employee, or a family member of the employee, being a victim of
3 domestic or sexual violence, if the leave is to allow the employee to
4 obtain for the employee or the family member: medical attention
5 needed to recover from physical or psychological injury or disability
6 caused by domestic or sexual violence; services from a designated
7 domestic violence agency or other victim services organization;
8 psychological or other counseling; relocation; or legal services,
9 including obtaining a restraining order or preparing for, or
10 participating in, any civil or criminal legal proceeding related to the
11 domestic or sexual violence;

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

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

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

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

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

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

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

1 employee to give notice of the intention as soon as practicable, if the
2 employer has notified the employee of this requirement. Employers
3 may prohibit employees from using foreseeable earned sick leave on
4 certain dates, and require reasonable documentation if sick leave that
5 is not foreseeable is used during those dates. For earned sick leave
6 of **【three or】** more than five consecutive days, an employer may
7 require reasonable documentation that the leave is being taken for the
8 purpose permitted under subsection a. of this section. If the leave is
9 permitted under paragraph (1) or (2) of subsection a. of this section,
10 documentation **【signed】** provided by a health care professional who
11 is treating the employee or the family member of the employee
12 indicating the need for the leave and, if possible, number of days of
13 leave, shall be considered reasonable documentation. For the
14 purposes of this documentation, any evaluation and determination of
15 treatment needed for the health condition of the employee or family
16 member may be conducted by telephone, video or other remote
17 means deemed appropriate by the health care professional if isolation
18 of the employee or family member is found by the professional to be
19 needed to reduce health hazards to others, including health providers
20 or caregivers. If the leave is permitted under paragraph (3) of
21 subsection a. of this section because of domestic or sexual violence,
22 any of the following shall be considered reasonable documentation
23 of the domestic or sexual violence: medical documentation; a law
24 enforcement agency record or report; a court order; documentation
25 that the perpetrator of the domestic or sexual violence has been
26 convicted of a domestic or sexual violence offense; certification from
27 a certified Domestic Violence Specialist or a representative of a
28 designated domestic violence agency or other victim services
29 organization; or other documentation or certification provided by a
30 social worker, counselor, member of the clergy, shelter worker,
31 health care professional, attorney, or other professional who has
32 assisted the employee or family member in dealing with the domestic
33 or sexual violence. If the leave is permitted under paragraph (4) of
34 subsection a. of this section, a copy of the order of the public official
35 or the determination by the health authority shall be considered
36 reasonable documentation.

37 c. Nothing in this act shall be deemed to require an employer to
38 provide earned sick leave for an employee's leave for purposes other
39 than those identified in this section, or prohibit the employer from
40 taking disciplinary action against an employee who uses earned sick
41 leave for purposes other than those identified in this section. An
42 employer may provide an offer to an employee for a payment of
43 unused earned sick leave in the final month of the employer's benefit
44 year. The employee shall choose, no later than 10 calendar days from
45 the date of the employer's offer, whether to accept a payment or
46 decline a payment. If the employee agrees to receive a payment, the
47 employee shall choose a payment for the full amount of unused
48 earned sick leave or for 50 percent of the amount of unused earned

1 sick leave. The payment amount shall be based on the same rate of
2 pay that the employee earns at the time of the payment. If the
3 employee declines a payment for unused earned sick leave, or agrees
4 to a payment for 50 percent of the amount of unused sick leave, the
5 employee shall be entitled to carry forward any unused or unpaid
6 earned sick leave to the proceeding benefit year as provided pursuant
7 to subsection a. of section 2 of this act. If the employee agrees to a
8 payment for the full amount of unused earned sick leave, the
9 employee shall not be entitled to carry forward any earned sick leave
10 to the proceeding benefit year pursuant to subsection a. of section 2
11 of this act.

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

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

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

36

37 4. This act shall take effect immediately.

38

39

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STATEMENT

41

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

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

46 2. Increases, from 40 to 56, the number of hours of earned sick
47 leave a worker may annually accrue and use, and carry forward from
48 one year to another, and, if the worker is an essential worker in a

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1 declared state of emergency, provides an additional 120 hours of sick
2 leave that can be used during and after the state of emergency, but
3 not carried forward from one year to another.

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

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

8 5. Increases, from two days to five days, the period of time after
9 which an employer may require documentation by a health
10 professional of the need for leave, and specifies

11 that, for the purpose of documentation, if isolation is needed to
12 reduce health hazards, the determination by the professional of the
13 need for leave may be conducted by telephone, video or other remote
14 means.