Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS
Allows long-term care facility employees to accrue paid sick leave.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning long-term care facility staff 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] P.L.2018, c.10 (C.34:11D-1 et seq.):
   "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] P.L.2018, c.10 (C.34:11D-2), 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] P.L.2018, c.10 (C.34:11D-1 et seq.). 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).

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

"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.

"Employer" 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.

"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.

"Long-term care facility" means a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.).

"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] P.L.2018, c.10 (C.34:11D-1 et seq.) under the terms of employment; or

(b) has waived earned sick leave benefits as provided under [this act] P.L.2018, c.10 (C.34:11D-1 et seq.) 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 or any individual who is employed by a long-term care facility.

"Retaliatory personnel action" means denial of any right guaranteed under [this act] P.L.2018, c.10 (C.34:11D-1 et seq.) 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.

(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. (1) 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) P.L.2018, c.10 (C.34:11D-3). 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 of earned sick leave.

(Unless) (2) Except as provided in paragraph (3) of this subsection, unless the employee has accrued earned sick leave prior to the effective date of (this act) P.L.2018, c.10 (C.34:11D-1 et seq.), 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 of earned sick leave.

(3) In the case of an employee of a long-term care facility, unless the employee has accrued earned sick leave prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day 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] P.L.2018, c.10 (C.34:11D-3) in the manner provided by [this act] P.L.2018, c.10 (C.34:11D-3), 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] P.L.2018, c.10 (C.34:11D-1 et seq.). 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. This act shall take effect immediately.
This bill allows employees in long-term care facilities to earn paid sick leave. Current law requires employers to provide their employees with accumulated paid sick leave at a rate of one hour for every 30 hours worked. However, the requirement does not apply to per diem health care employees, other than certified homemaker-home health aides. The bill revises this exception to provide that long-term care facilities will also be required to provide their employees with accumulated paid sick leave. The paid sick leave will begin to accrue on the effective date of the bill, but long-term care facility employees will be credited with earned sick leave for any hours worked between March 9, 2020, which is the date the state of emergency and public health emergency were declared in response to the coronavirus disease 2019 (COVID-19) pandemic, and the effective date of the bill. Long-term care facility employees will be entitled to begin using any accumulated sick leave on the effective date of the bill. The standard requirements for accrual and use of paid sick leave will apply to long-term care facility employees who commence employment after the effective date of the bill.

In response to high numbers of nursing home resident deaths that resulted from the coronavirus disease 2019 (COVID-19) pandemic, the State commissioned a study through Manatt Health to identify the causes of those deaths and identify strategies to mitigate the effects of COVID-19 and future outbreaks of communicable diseases on nursing home populations. Manatt Health issued a report that, among other items, cited the lack of paid sick leave as a contributing cause to the rapid spread of COVID-19 in nursing homes. Specifically, staff who were sick or experiencing symptoms of COVID-19 were forced to continue working, meaning they continued to report to the nursing home and interact with residents and other staff members, accelerating and exacerbating the spread of COVID-19 in the homes. The Manatt report expressly recommended, as part of the overall strategy to improve the conditions in nursing homes that contributed to the rapid and deadly spread of COVID-19, that nursing home staff be allowed to accumulate and use paid sick leave.