

[First Reprint]

SENATE, No. 2786

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senators Pou, Ruiz and Turner

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens Committee on August 25, 2020, with amendments.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning long-term care facility staff 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 as
8 follows:

9 1. For the purposes of **[this act]** P.L.2018, c.10 (C.34:11D-
10 1 et seq.):

11 "Benefit year" means the period of 12 consecutive months
12 established by an employer in which an employee shall accrue and use
13 earned sick leave as provided pursuant to section 2 of **[this act]**
14 P.L.2018, c.10 (C.34:11D-2), provided that once the starting date of
15 the benefit year is established by the employer it shall not be changed
16 unless the employer notifies the commissioner of the change in
17 accordance with regulations promulgated pursuant to **[this act]**
18 P.L.2018, c.10 (C.34:11D-1 et seq.). The commissioner shall impose a
19 benefit year on any employer that the commissioner determines is
20 changing the benefit year at times or in ways that prevent the accrual
21 or use of earned sick leave by an employee.

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

26 "Child" means ¹**[a]** any¹ biological ¹child¹, adopted ¹child¹,
27 ¹**[or]**¹ foster child, stepchild ^{1,1} or legal ward of an employee, ¹and
28 any¹ child of a domestic partner or civil union partner of ¹**[the]** an¹
29 employee.

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

32 "Commissioner" means the Commissioner of Labor and
33 Workforce Development.

34 "Department" means the Department of Labor and Workforce
35 Development.

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

43 "Domestic or sexual violence" means stalking, any sexually violent
44 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 SHH committee amendments adopted August 25, 2020.

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 "Domestic partner" means a domestic partner as defined in section
4 3 of P.L.2003, c.246 (C.26:8A-3).

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

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

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

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

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

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

44 "Per diem health care employee" means any:

45 (1) health care professional licensed in the State of New Jersey
46 employed by a health care facility licensed by the New Jersey
47 Department of Health;

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

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

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

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

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

15 (3) either:

16 (a) has the opportunity for full time or part time employment in
17 their scope of practice under that healthcare provider which offers paid
18 time off benefits greater in length than provided under **[this act]**
19 P.L.2018, c.10 (C.34:11D-1 et seq.) under the terms of employment; or

20 (b) has waived earned sick leave benefits as provided under **[this**
21 **act]** P.L.2018, c.10 (C.34:11D-1 et seq.) under terms of employment
22 for alternative benefits or consideration.

23 "Per diem health care employee" shall not include any individual
24 who is certified as a homemaker-home health aide or any individual
25 who is employed by¹ or placed with¹ a long-term care facility.

26 "Retaliatory personnel action" means denial of any right
27 guaranteed under **[this act]** P.L.2018, c.10 (C.34:11D-1 et seq.) and
28 any threat, discharge, including a constructive discharge, suspension,
29 demotion, unfavorable reassignment, refusal to promote, disciplinary
30 action, sanction, reduction of work hours, reporting or threatening to
31 report the actual or suspected immigrant status of an employee or the
32 employee's family, or any other adverse action against an employee.

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

35 "Spouse" means a husband or wife.

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

37
38 2. Section 2 of P.L.2018, c.10 (C.34:11D-2) is amended to read as
39 follows:

40 2. a. (1) Each employer shall provide earned sick leave to each
41 employee working for the employer in the State. For every 30 hours
42 worked, the employee shall accrue one hour of earned sick leave,
43 except that an employer may provide an employee with the full
44 complement of earned sick leave for a benefit year, as required under
45 this section, on the first day of each benefit year in accordance with
46 subsection c. or subsection d. of section 3 of **[this act]** P.L.2018, c.10
47 (C.34:11D-3). The employer shall not be required to permit the

1 employee to accrue or use in any benefit year, or carry forward from
2 one benefit year to the next, more than 40 hours of earned sick leave.

3 【Unless】 (2) Except as provided in paragraph (3) of this
4 subsection, unless the employee has accrued earned sick leave prior to
5 the effective date of 【this act】 P.L.2018, c.10 (C.34:11D-1 et seq.), the
6 earned sick leave shall begin to accrue on the effective date of 【this
7 act】 P.L.2018, c.10 (C.34:11D-1 et seq.) for any employee who is
8 hired and commences employment before the effective date of 【this
9 act】 P.L.2018, c.10 (C.34:11D-1 et seq.) and the employee shall be
10 eligible to use the earned sick leave beginning on the 120th calendar
11 day after the employee commences employment, and if the
12 employment commences after the effective date of 【this act】
13 P.L.2018, c.10 (C.34:11D-1 et seq.), the earned sick leave shall begin
14 to accrue upon the date that employment commences and the
15 employee shall be eligible to use the earned sick leave beginning on
16 the 120th calendar day after the employee commences employment,
17 unless the employer agrees to an earlier date. The employee may
18 subsequently use earned sick leave as soon as it is accrued.

19 (3) In the case of an employee ¹【of】 employed by or placed with¹
20 a long-term care facility, unless the employee has accrued earned sick
21 leave prior to the effective date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), the earned sick leave shall begin to
23 accrue on the effective date of P.L. , c. (C.) (pending before
24 the Legislature as this bill) for any employee who is hired and
25 commences employment before the effective date of
26 P.L. , c. (C.) (pending before the Legislature as this bill),
27 ¹【and】¹ the employee shall additionally be credited with earned sick
28 leave for any hours worked between March 9, 2020 and the effective
29 date of P.L. , c. (C.) (pending before the Legislature as this
30 bill) ¹【. The】 and the¹ employee shall be eligible to use the earned
31 sick leave beginning on the ¹【30th】 60th¹ calendar day after the
32 employee commences employment ¹【, and if】 . If¹ the employment
33 ¹or placement¹ commences after the effective date of P.L. , c.
34 (C.) (pending before the Legislature as this bill), the earned sick
35 leave shall begin to accrue upon the date that employment commences
36 and the employee shall be eligible to use the earned sick leave
37 beginning on the 120th calendar day after the employee commences
38 employment, unless the employer agrees to an earlier date. The
39 employee may subsequently use earned sick leave as soon as it is
40 accrued.

41 b. An employer shall be in compliance with this section if the
42 employer offers paid time off, which is fully paid and shall include,
43 but is not limited to personal days, vacation days, and sick days, and
44 may be used for the purposes of section 3 of 【this act】 P.L.2018, c.10
45 (C.34:11D-3) in the manner provided by 【this act】 P.L.2018, c.10

1 (C.34:11D-3), and is accrued at a rate equal to or greater than the rate
2 described in this section.

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

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

16 e. If an employee is transferred to a separate division, entity, or
17 location, but remains employed by the same employer, then the
18 employee shall be entitled to all earned sick leave accrued at the prior
19 division, entity, or location, and shall be entitled to use the accrued
20 earned sick leave as provided in **[this act]** P.L.2018, c.10 (C.34:11D-1
21 et seq.). If an employee is terminated, laid off, furloughed, or
22 otherwise separated from employment with the employer, any unused
23 accrued earned sick leave shall be reinstated upon the re-hiring or
24 reinstatement of the employee to that employment, within six months
25 of termination, being laid off or furloughed, or separation, and prior
26 employment with the employer shall be counted towards meeting the
27 eligibility requirements set forth in this section. When a different
28 employer succeeds or takes the place of an existing employer, all
29 employees of the original employer who remain employed by the
30 successor employer are entitled to all of the earned sick leave they
31 accrued when employed by the original employer, and are entitled to
32 use the earned sick leave previously accrued immediately.

33 f. An employer may choose the increments in which its
34 employees may use earned sick leave, provided that the largest
35 increment of earned sick leave that an employee may be required to
36 use for each shift for which earned sick leave is used shall be the
37 number of hours the employee was scheduled to work during that shift.
38 (cf: P.L.2018, c.10, s.2)

39

40 3. This act shall take effect immediately.