



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- Employers may use existing paid leave policies to comply with the Act.
- Employees are **not** entitled to the payout of unused paid sick leave upon separation from employment.
- The Act preempts **all** existing and future local paid sick leave ordinances.

## IMPORTANT DATES

### April 12, 2018

The New Jersey Legislature passed the Act

### May 2, 2018

Governor Murphy signed the Act

### October 29, 2018

The Act becomes effective

## New Jersey Enacts Statewide Paid Sick Leave

### OVERVIEW

On May 2, 2018, New Jersey Governor Phil Murphy signed the [Paid Sick Leave Act](#) (Act) into law. The Act will require virtually all employers to provide paid sick leave to employees, effective **Oct. 29, 2018**. Under the Act:

- ✓ All New Jersey employers must provide paid sick leave to their employees;
- ✓ Employees will accrue one hour of paid sick leave for every 30 hours worked, up to 40 hours per year; and
- ✓ Employees must be paid for paid sick leave at the same rate (and with the same benefits) they normally earn.

This Compliance Bulletin provides an overview of the Act.

### ACTION STEPS

Employers should review their existing paid leave and attendance policies to determine if revisions must be made to comply with the Act. Employers should confirm that payroll systems can comply with the Act's recordkeeping requirements, and monitor new developments, including the publication of model notices and regulations implementing the Act.

Provided By:

New Agency Partners



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## Covered Employers

All employers in New Jersey must comply with the Act's requirements. There is **no exception for small employers**.

In addition, temporary staffing firms must comply with the Act, providing paid sick leave to employees based on the total number of hours worked through the temporary staffing firm.

An employer with a paid leave policy (including, for example, vacation, paid time off and sick leave) that is at least as favorable to employees as the Act's requirements is not required to provide employees with additional paid sick leave. The employer's policy must provide at least the same amount of paid leave and permit employees to use paid leave for the same purposes as required under the Act.

## Eligible Employees

Most employees working in New Jersey will be eligible for paid sick leave accrual and use. However, the Act specifically excludes certain types of employees. For example, construction workers who are employed pursuant to a collective bargaining agreement, per diem health care workers and public employees who are currently provided with paid sick leave benefits, are not entitled to paid sick leave under the Act.

Also, the Act does not apply to employees who are covered by a collective bargaining agreement that is in effect at the time the paid sick leave law becomes effective, until the collective bargaining agreement expires. Employees or employee representatives may waive their rights under the Act during the negotiation of a collective bargaining agreement.

## Accrual of Paid Sick Leave

Employees accrue **one hour of paid sick leave for every 30 hours worked, up to 40 hours per benefit year**. The benefit year is any consecutive 12-month period as established by the employer. After an employer establishes its benefit year, the employer may not change it without notifying the Commissioner of Labor and Workforce Development (Commissioner).

Employees begin accruing paid sick leave upon the Act's effective date. Employees who are hired after the Act's effective date begin accruing paid sick leave upon hire. In both situations, employers may require employees to wait 120 calendar days after the employee's hire date to use any accrued paid sick leave. Employees who were employed with an employer for 120 or more calendar days as of the Act's effective date may use paid sick leave as it is accrued.

*Virtually all businesses that have one or more employees in New Jersey will be required to provide paid sick leave. However, employers with existing paid leave policies that are at least as generous as the Act's requirements are not required to provide additional paid sick leave.*

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Instead of tracking paid sick leave accruals, employers may provide employees with the entire amount of paid sick leave the employee would earn (up to 40 hours) on the first day of the benefit year. When an employer **front-loads paid sick leave**, at the end of the benefit year, the employer must either:

- ✓ Pay the employee for the full amount of unused paid sick leave; or
- ✓ Carry over unused paid sick leave into the next benefit year.

## Use of Paid Sick Leave

Employers may require employees to wait **120 calendar days** after the employee's hire date to use any accrued paid sick leave. The Act permits employees to use **up to 40 hours of paid sick leave per benefit year** for any of the following reasons:

1	Preventive medical care for the employee or for diagnosis, care, treatment or recovery from an employee's own mental or physical illness, injury or other adverse health condition
2	Time needed for the employee to care for his or her family member during diagnosis, care, treatment or recovery from the family member's mental or physical illness, injury or other adverse health condition or for the family member's preventive medical care
3	Time off needed due to the employee, or an employee's family member, being a victim of domestic or sexual violence to allow the victim to obtain: <ul style="list-style-type: none"><li>✓ Medical attention required to recover from physical or psychological injury due to domestic or sexual violence;</li><li>✓ Services from a designated domestic violence agency or other victim services organization;</li><li>✓ Psychological or other counseling;</li><li>✓ Relocation; or</li><li>✓ Legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding relating to the domestic or sexual violence</li></ul>
4	Time off when the employee cannot work due to the closure of the employee's workplace or the closure of the employee's child's school or place of care if the closure is: <ul style="list-style-type: none"><li>• By order of a public official due to an epidemic or other public health emergency; or</li><li>• Because a public health authority determines that the presence in the community of the employee (or an employee's family member in need of care by the employee) would jeopardize the health of others</li></ul>

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Time off in connection with the employee's child for 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 employee's child in connection with the child's health condition or disability

An employer and employee may mutually agree for the employee to work additional hours or shifts in the same or following pay period in lieu of using accrued paid sick leave for time missed. However, the employee cannot be required to work additional hours or shifts, or be required to find a replacement worker to cover the hours an employee is using paid sick leave.

Employers are free to establish the increments of paid sick leave use. However, an employer may not establish an increment of paid sick leave use that exceeds the employee's scheduled shift.

## *Family Members*

An employee's "family member" is defined very broadly under the Act and includes:

- ✓ A child, grandchild, sibling, spouse, domestic partner, civil union partner, parent or grandparent of the employee;
- ✓ A spouse, domestic partner or civil union partner of a parent or grandparent of the employee;
- ✓ 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.**

## Payment of Paid Sick Leave Use

Employees using paid sick leave must be paid the same rate of pay, with the same benefits, that they normally earn, so long as the pay rate is not less than the applicable minimum wage.

## Employee Notice Requirements

When the need to use paid sick leave is foreseeable, an employer may require its employees to provide advance notice of up to seven calendar days prior to the use of leave. The advance notice may be required to include the intention to take paid sick leave and the anticipated duration of the leave.

The employee may be required to schedule paid sick leave in a manner that does not unduly disrupt the employer's operations. In addition, an employer may prohibit the use of foreseeable paid sick leave on certain dates and require reasonable documentation if sick leave that is not foreseeable is used on those dates.

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When the need to use paid sick leave is **not** foreseeable, employees must provide the employer with notice as soon as practicable, if the employee has been notified of the requirement to do so.

## Documentation of Paid Sick Leave Use

If an employee uses paid sick leave for three or more consecutive days, an employer may require reasonable documentation that the leave is being used for a reason that is permitted by the Act. Any documentation obtained by the employer must be kept confidential.

Employers may discipline employees who use paid sick leave for a purpose other than the purposes that are permitted under the Act.

## Carryover Requirements

In the final month of the employer's benefit year, an employer may (but is not required to) offer employees the option to receive payment of unused paid sick leave. Employees must be given **10 calendar days** from the date of the employer's offer to:

- ✓ Accept full payment of unused paid sick leave;
- ✓ Accept payment for 50 percent of the amount of unused paid sick leave; or
- ✓ Decline the employer's offer to pay out unused paid sick leave.

If the employee chooses to receive 50 percent payment for unused paid sick leave or declines the payment, the employee will carry over up to 40 hours of unused paid sick leave to the next benefit year. If the employee accepts full payment, no carryover is required.

Employers that choose to front-load paid sick leave must either pay out employees' unused paid sick leave at the end of the benefit year or carry over employees' unused paid sick leave to the next benefit year. An employer may only pay out unused paid sick leave of an employee who was front-loaded with paid sick leave if the employer forgoes the accrual process for that employee in the next benefit year. This means that an employer cannot pay out unused, front-loaded paid sick leave at the end of the benefit year, and then require the employee to accrue paid sick in the following benefit year.

## Termination and Rehire Requirements

Employers are **not** required to pay employees for unused paid sick leave upon separation from employment.

If an employee separates employment with an employer and is rehired or reinstated **within six months**, any unused, accrued paid sick leave must be reinstated upon the employee's rehire. In addition, the employee's prior employment with the employer counts toward meeting the eligibility requirements (such as the 120-day waiting period).

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## Employee Protections

Employers are prohibited from counting an employee's permitted paid sick leave absence as an absence that will result in discipline, discharge, demotion, suspension or loss or reduction in pay or any other adverse action. Also, employers may not retaliate or discriminate against an employee who requests or uses paid sick leave under the Act, or the employer's own paid leave policy.

## Employer Notice and Recordkeeping Requirements

The Commissioner will provide a model notice for employers to use to inform employees of their rights under the Act. The notice will include information on the amount of paid sick leave employees are entitled to and the remedies available if an employer fails to provide the required benefits or retaliates against employees for exercising their rights.

Employers are required to conspicuously post this notice in the workplace and provide a written copy of the notice to each employee **within 30 days** of when the Commissioner makes the notice available. Employees hired after the issuance of the notice must be provided the written notice upon hire and upon request.

Employers must maintain records **for five years** that document hours worked by employees and paid sick leave taken by employees.

## Preemption of Local Paid Sick Leave Ordinances

The Act preempts any local paid sick leave ordinance enacted prior to, or after, the Act's effective date. This means, for example, employers located in Jersey City, Trenton and Montclair must only comply with the statewide paid sick leave requirements. The Act also preempts any future county or municipal ordinances, resolutions, laws, rules or regulations regarding paid sick leave.