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# The Gavel

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## **New Jersey Requires Employers to Provide Paid Sick Leave**

By Ross Wagner, Law Clerk at Wong Fleming

On May 2, 2018, New Jersey Governor Phil Murphy signed the New Jersey Paid Sick Leave Act (“Act”) into law. The Act will go in effect on October 29, 2018 as New Jersey joins several other states and the District of Columbia in requiring employers to provide paid sick leave to their employees. Most importantly, the law preempts the paid sick leave laws in effect of 13 municipalities in the State and employers will now only have to comply with the requirements of this new law.

### **Who is Covered Under New Jersey Paid Sick Leave?**

The Act is extremely broad and covers the majority of “employers” and “employees” in the state. The Act applies to any person or entity that employs employees in the state. The only exception are public employers that are required to provide their employees with paid sick time pursuant to other laws or regulations of New Jersey. The Act also defines “employee” quite broadly and excludes only: (1) employees performing services in the construction industry under contract pursuant to a collective bargaining agreement; (2) “per diem health care employee[s]”; and (3) public employees receiving paid sick leave pursuant to another New Jersey law, rule or regulation. Both part-time and full-time employees are entitled to leave under the Act.

### **How Much Paid Sick Leave are Employers Required to Provide?**

Employees covered under the Act accrue one hour of earned sick leave for every 30 hours worked, which is capped at 40 hours per year. The accrual is for a “benefit year” which can be any period of time so long as it represents 12 consecutive months. Employers also have the option of providing the full 40

hours of paid sick leave time at the beginning of the benefit year. Any employer that offers paid time off (including personal days, vacation days, or sick days) will be in compliance with the law if the paid time off may be used for the purposes enumerated under the law in the manner provided by the law and is accrued at a rate equal to or greater than the rate required by the law. Employees begin accruing sick leave immediately upon starting employment, but employers can prohibit the actual use of any sick leave until 120 calendar days have passed from the start of employment.

### **What Qualifies as “Sick Time”?**

Employees are permitted to use paid sick time for any of the following reasons:

1. “[T]he diagnosis, care, or treatment of, or recovery from an employee’s mental or physical illness or injury . . . or for preventative medical care for the employee.”
2. To aid or care for a family member (“family member” is broadly defined, see below) “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 preventative medical care for the family member.”
3. In connection with a child of the employee to attend a school-related conference, meeting, function, or other event required by the school, or to attend a meeting regarding care provided to the child.
4. 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 or family member to obtain medical, legal, or other victim services.
5. When “the employee is not able to work because of 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 due to an epidemic or other public health emergency, or because of the issuance by a 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.”

### **How Does the Act Define “Family Member”?**

As with the majority of the portions and definitions under the Act, “family member” is defined very broadly to include:

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.

### **Notice, Timing, and Documentation**

If the leave is foreseeable, employers may require notice of no more than seven calendar days before using sick leave. If it is unforeseeable, then employees need to only provide as much notice as is reasonable under the circumstances.

If the sick leave extends more than three consecutive days, employers may request that the employee provide documentation to prove that the leave is

eligible.

Employers are required to maintain records documenting the amount of sick leave used by employees for a period of five years.

### **Employer Notice**

On October 3, 2018, the New Jersey Department of Labor and Workforce Development released on its website the required notice that must be posted and distributed to all New Jersey employees. A copy of the notice can be found on the NJDLWD website. New Jersey employers must post a notice of employee rights in a conspicuous place accessible to all employees in each of the employer's workplaces. This can include an internet or intranet site that is used exclusively by company employees.

Employers must provide all employees with a copy of the notice of rights, hard copy or e-mail is acceptable, (1) within 30 days after it is issued by the NJDOL, (2) at the time of hiring (if the employee is hired after the notice is issued), and (3) the first time an employee requests a copy of the notice.

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*For further information about the New Jersey Paid Sick Leave Act, please contact Wong Fleming at (609) 951-9520.*

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