

# Beginning October 29, 2018, New Jersey Employers Must Provide Paid Sick Leave

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## The Bottom Line

- Before October 29 2018, New Jersey employers should review and revise their sick leave and paid time off policies to ensure compliance with the New Jersey Paid Sick Leave Act's requirements, including its carryover versus payout requirements.
- Employers will also need to revise their onboarding practices to include the form notice of rights that will be issued by New Jersey's Commissioner of Labor and Workforce Development.

On October 29, 2018, New Jersey employers will be required to provide eligible employees with up to 40 hours of paid sick leave per year under the New Jersey Paid Sick Leave Act (the Act).

The Act, which preempts all New Jersey sick leave ordinances, follows the trend of numerous other jurisdictions that require employers to provide paid sick and safe leave, such as New York City, California (including San Francisco and Los Angeles), and Chicago. Below is a summary of the most critical parts of the Act.

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## Covered Employers and Employees

The Act applies to New Jersey employers, regardless of their size. All employees working in New Jersey are eligible to accrue paid sick leave under the Act, with the exception of (1) construction industry employees who are subject to a collective bargaining agreement, (2) per diem health care employees, and (3) public employees who receive sick leave under any other New Jersey law.

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## Accrual, Frontloading, and Carry Over

Eligible employees will accrue one hour of paid sick leave for every 30 hours worked, up to a maximum of 40 hours per benefit year, which is any consecutive 12-month period as established by the employer. At the end of the year, employers must either allow employees to carry over into the following year unused, accrued sick leave (up to maximum of 40 hours), or offer employees the option to receive payment of their unused accrued leave. If the employer provides the option of payout, the employee can: (1) accept the payout, (2) decline the payout and carry over all unused time to the next year (up to a maximum of 40 hours), or (3) accept payout for half of the unused accrued time and carry over the remaining time (up to a maximum of 40 hours).

As an alternative to accrual, employers may frontload at the beginning of the benefit year the full 40 hours of paid sick leave. However, unlike sick leave laws in other jurisdictions, New Jersey employers cannot avoid carryover of unused earned sick leave by frontloading. Rather, employers who frontload sick leave must either allow the employee to carry over unused sick time into the following year (up to a maximum of 40 hours), or pay the full amount of unused sick time at the end of the benefit year.

Employers with paid time off policies that provide time off at the same (or greater) accrual rate as the Act can satisfy their obligations (and need not create a separate sick time policy), as long as employees may use that paid time off for the Act's covered purposes and in the same manner as provided by the Act.

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## Use of Sick Leave and Covered Reasons

Eligible employees will accrue paid sick leave starting on their first day of employment or October 29, 2018 (whichever is later), and may begin using such time after 120 days of employment. Employees may use earned sick leave for any of the following covered reasons:

1. Covered "sick time" reasons, including time needed for diagnosis, care, treatment of, or recovery from the employee's, or his/her family member's, mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee or the employee's family member.
  2. Covered "safe time" reasons where the employee, or the employee's family member, is a victim of domestic or sexual violence, including seeking: a) medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; b) services from a designated domestic violence agency or other victim services organization; c) psychological or other counseling; d) relocation; or e) legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence.
  3. When the employee is unable to work because of a closure of his/her workplace or the school or place of care of his/her child, by order of a public official due to an epidemic or other public health emergency, or because a public health authority has issued a determination that the presence in the employee's community, or a member of the employee's family in need of care by the employee, would jeopardize the health of others.
  4. Time needed by the employee to attend his/her child's 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 child in connection with the child's health conditions or disability.
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## Employee Notice and Requests for Documentation

If an employee's need to use paid sick leave is foreseeable, they may be required to provide up to seven calendar days advance notice of the need for sick leave and its expected duration, and also may be required to make a reasonable effort to schedule the time off in a manner that does not unduly disrupt the employer's operations. If the employee's need is not foreseeable, employers may require notice of the use of leave as soon as practicable (as long as the employee is notified of this requirement).

If an employee takes three or more consecutive days of paid sick leave, the employer may require the employee to provide "reasonable documentation" (as defined in the Act) to confirm that their use of leave was for a covered reason. Employers may prohibit employees from using foreseeable paid sick leave on certain dates, and may require "reasonable documentation" if paid sick leave that is not foreseeable is used during those dates. While employers cannot require employees using leave to find coverage for missed hours or shifts, the employer and employee may agree to have the employee work additional hours or shifts during the same or next pay period in lieu of the missed hours (as long as the employee does so voluntarily).

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## **Recordkeeping and Notice Requirements**

Employers will have to retain records documenting employees' hours worked and earned sick leave taken, for a period of five years. Employers will also have to provide employees with a notice summarizing their rights under the Act. The notice, which will be issued by the Commissioner of Labor and Workforce Development, must be posted in a conspicuous place in the workplace, and also must be distributed to each employee within 30 days after the form is issued by the Commissioner, to all new hires, and at any time when first requested by the employee.

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## **Proposed Regulations**

New Jersey's Department of Labor and Workforce Development recently issued proposed regulations to cover a wide variety of issues under the Act. For example, the regulations clarify that employers may only prohibit foreseeable sick leave use during "verifiable high-volume periods or special events" when "permitting the use of foreseeable earned sick leave would unduly disrupt" the employer's operations, such as a new product launch or a predictable increase in customer activity (for example, a holiday). The regulations are subject to a 60-day comment period and thus will not go into effect until after the Act's October 29, 2018 effective date.

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