

[First Reprint]

ASSEMBLY, No. 2354

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED FEBRUARY 6, 2014

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District 6 (Burlington and Camden)

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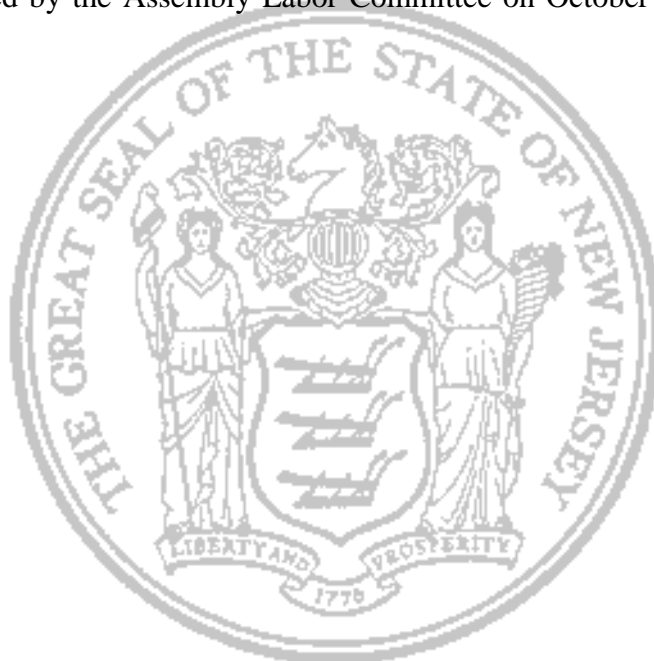
Assemblymen Diegnan, Benson, Assemblywoman Jasey, Assemblyman Garcia, Assemblywoman Watson Coleman and Assemblyman Giblin

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on October 27, 2014, with amendments.



(Sponsorship Updated As Of: 12/5/2014)

1 AN ACT mandating certain employers provide earned sick leave to
2 employees.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. For the purposes of this act:

8 ¹"Benefit year" means the period of 12 consecutive months
9 established by an employer in which an employee shall accrue and
10 use earned sick leave as provided pursuant to section 2 of this act,
11 provided that once the starting date of the benefit year is established
12 by the employer it shall not be changed unless the employer
13 petitions the commissioner for a change in accordance with
14 regulations promulgated pursuant to this act.¹

15 "Certified Domestic Violence Specialist" means a person who
16 has fulfilled the requirements of certification as a Domestic
17 Violence Specialist established by the New Jersey Association of
18 Domestic Violence Professionals.

19 "Child" means a biological, adopted, or foster child, stepchild or
20 legal ward of an employee, child of a domestic partner or civil
21 union partner of the employee, if the child is less than 19 years of
22 age, or is 19 years of age or older but incapable of self-care because
23 of mental or physical impairment.

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

26 "Commissioner" means the Commissioner of Labor and
27 Workforce Development.

28 "Department" means the Department of Labor and Workforce
29 Development.

30 "Designated domestic violence agency" means a county-wide
31 organization with a primary purpose to provide services to victims
32 of domestic violence, and which provides services that conform to
33 the core domestic violence services profile as defined by the
34 Division of ¹**[Youth and Family Services]** Child Protection and
35 Permanency¹ in the Department of Children and Families and is
36 under contract with the division for the express purpose of
37 providing the services.

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

40 "Domestic ¹or sexual¹ violence" means ¹stalking, any sexually
41 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
42 27.26), or¹ domestic violence as defined in section 3 of P.L.1991,
43 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-6)¹**[**,
44 stalking, or any sexually violent offense, as defined in section 3 of

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:

¹Assembly ALA committee amendments adopted October 27, 2014.

1 P.L.1998, c.71 (C.30:4-27.26)]¹.

2 "Employee" means an individual engaged in service to an
3 employer in the business of the employer for compensation.
4 ¹"Employee" does not include an employee performing service in
5 the construction industry that is under contract pursuant to a
6 collective bargaining agreement.¹

7 "Employer" means any person, firm, business, educational
8 institution, nonprofit agency, corporation, limited liability company
9 or other entity that employs employees in the State.

10 "Family member" means a child, grandchild, sibling, spouse,
11 domestic partner, civil union partner, parent, or grandparent of an
12 employee, or a spouse, domestic partner, or civil union partner of a
13 parent or grandparent of the employee, or a sibling of a spouse,
14 domestic partner, or civil union partner of the employee.

15 "Health care professional" means any person licensed under
16 federal, State, or local law, or the laws of a foreign nation, to
17 provide health care services, or any other person who has been
18 authorized to provide health care by a licensed health care
19 professional, including but not limited to doctors, nurses and
20 emergency room personnel.

21 "Parent" means a biological, adoptive, or foster parent,
22 stepparent, or legal guardian of an employee or of the employee's
23 spouse, domestic partner, or civil union partner, or a person who
24 stood in loco parentis of the employee or the employee's spouse,
25 domestic partner, or civil union partner when the employee, spouse
26 or partner was a minor child.

27 "Retaliatory personnel action" means denial of any right
28 guaranteed under this act and any threat, constructive discharge,
29 suspension, demotion, unfavorable reassignment, refusal to
30 promote, disciplinary action, sanction, or any other adverse action
31 against an employee.

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

34 "Small employer" means an employer who had, on average,
35 fewer than 10 employees during the preceding calendar year, or
36 during the current year if the employer had no employees during the
37 preceding calendar year. Periods of time in which the employer had
38 no employees shall not be considered in determining the average
39 number of employees. In determining whether an employer is a
40 small employer, the number of employees shall include all
41 individuals working for compensation on a full-time, part-time or
42 temporary basis, including individuals made available to work at a
43 workplace of the employer through a temporary help services firm.

44 "Spouse" means a husband or wife.

45

46 2. a. Each employer shall provide earned sick leave to each
47 employee working for the employer in the State. For every 30 hours
48 worked, the employee shall accrue one hour of earned sick leave.

1 The employer shall not be required to permit the employee to
2 accrue at any one time, or carry forward from one ¹benefit¹ year to
3 the next, more than 40 hours of earned sick leave if the employer is
4 a small employer, or more than 72 hours of earned sick leave if the
5 employer is not a small employer. Unless the employee has accrued
6 earned sick leave prior to ¹**【January 1, 2014】** the effective date of
7 this act¹, the earned sick leave shall begin to accrue on ¹**【January 1,**
8 **2014】** the effective date of this act¹ or on the 90th day after the
9 hiring of the employee if hired after ¹**【January 1, 2014】** the
10 effective date of this act¹, unless the employer agrees to an earlier
11 date. The employee may use earned sick leave as it is accrued.

12 b. An employer shall be in compliance with this section if the
13 employer offers any other fully paid leave that may be used for the
14 purposes of section 3 of this act in the manner provided by this act,
15 and is accrued at a rate equal to or greater than the rate described in
16 this section.

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

22 d. Upon the mutual consent of the employee and employer, an
23 employee may voluntarily choose to work additional hours or shifts
24 during the same or following pay period, in lieu of hours or shifts
25 missed, but shall not be required to use accrued earned sick leave.
26 An employer may not require, as a condition of an employee's using
27 earned sick leave, that the employee search for or find a
28 replacement worker to cover the hours during which the employee
29 is using earned sick leave.

30
31 3. a. An employer shall permit an employee to use the earned
32 sick leave accrued pursuant to this act for any of the following:

33 (1) Time needed for diagnosis, care, or treatment of, or recovery
34 from, an employee's mental or physical illness, injury or other
35 adverse health condition, or for preventive medical care for the
36 employee;

37 (2) Time needed for the employee to aid or care for a family
38 member of the employee during diagnosis, care, or treatment of, or
39 recovery from, the family member's mental or physical illness,
40 injury or other adverse health condition, or during preventive
41 medical care for the family member;

42 (3) Absence necessary due to circumstances resulting from the
43 employee, or a family member of the employee, being a victim of
44 domestic ¹or sexual¹ violence, if the leave is to allow the employee
45 to obtain for the employee or the family member: medical attention
46 needed to recover from physical or psychological injury or
47 disability caused by domestic ¹or sexual¹ violence; services from a

1 designated domestic violence agency or other victim services
2 organization; psychological or other counseling; relocation; or legal
3 services, including obtaining a restraining order or preparing for, or
4 participating in, any civil or criminal legal proceeding related to the
5 domestic ¹or sexual¹ violence; or

6 (4) Time during which the employee is not able to work because
7 of a closure of the employee's workplace, or the school or place of
8 care of a child of the employee, by order of a public official due to
9 an epidemic or other public health emergency, or because of the
10 issuance by a public health authority of a determination that the
11 presence in the community of the employee, or a member of the
12 employee's family in need of care by the employee, would
13 jeopardize the health of others.

14 b. If an employee's need to use earned sick leave is foreseeable,
15 an employer may require advance notice, not to exceed seven days
16 prior to the date the leave is to begin, of the intention to use the
17 leave and its expected duration, and shall make a reasonable effort
18 to schedule the use of earned sick leave in a manner that does not
19 unduly disrupt the operations of the employer. If the reason for the
20 leave is not foreseeable, an employer may require an employee to
21 give notice of the intention as soon as practicable. For earned sick
22 leave of three or more consecutive days, an employer may require
23 reasonable documentation that the leave is being taken for the
24 purpose permitted under subsection a. of this section. If the leave is
25 permitted under paragraph (1) or (2) of subsection a. of this section,
26 documentation signed by a health care professional who is treating
27 the employee or the family member of the employee indicating the
28 need for the leave and, if possible, number of days of leave, shall be
29 considered reasonable documentation. If the leave is permitted
30 under paragraph (3) of subsection a. of this section because of
31 domestic ¹or sexual¹ violence, any of the following shall be
32 considered reasonable documentation of the domestic ¹or sexual¹
33 violence: medical documentation; a law enforcement agency record
34 or report; a court order; documentation that the perpetrator of the
35 domestic ¹or sexual¹ violence has been convicted of a domestic ¹or
36 sexual¹ violence offense; certification from a certified Domestic
37 Violence Specialist or a representative of a designated domestic
38 violence agency or other victim services organization; or other
39 documentation or certification provided by a social worker,
40 counselor, member of the clergy, shelter worker, health care
41 professional, attorney, or other professional who has assisted the
42 employee or family member in dealing with the domestic ¹or
43 sexual¹ violence. If the leave is permitted under paragraph (4) of
44 subsection a. of this section, a copy of the order of the public
45 official or the determination by the health authority shall be
46 considered reasonable documentation. An employer who chooses to

1 require documentation for earned sick leave shall pay all out-of-
2 pocket expenses the employee incurs to obtain the documentation.

3 c. Nothing in this act shall be deemed to require an employer to
4 provide earned sick leave for an employee's leave for purposes
5 other than those identified in this section, or prohibit the employer
6 from taking disciplinary action against an employee who uses
7 earned sick leave for purposes other than those identified in this
8 section. Unless an employer policy or collective bargaining
9 agreement provides for the payment of accrued earned sick leave
10 upon termination, resignation, retirement or other separation from
11 employment, an employee shall not be entitled under this section to
12 payment of unused earned sick leave upon the separation from
13 employment.

14 d. Any information an employer possesses regarding the health
15 of an employee or any family member of the employee or domestic
16 'or sexual' violence affecting an employee or employee's family
17 member shall be treated as confidential and not disclosed except to
18 the affected employee or with the written permission of the affected
19 employee.

20

21 4. a. No employer shall take retaliatory personnel action or
22 discriminate against an employee because the employee requests or
23 uses earned sick leave either in accordance with this act or the
24 employer's own earned sick leave policy, as the case may be, or
25 files a complaint with the commissioner alleging the employer's
26 violation of any provision of this act, or informs any other person of
27 their rights under this act. No employer shall count earned sick
28 leave taken under this act as an absence that may result in the
29 employee being subject to discipline, discharge, demotion,
30 suspension, a loss or reduction of pay, or any other adverse action.

31 b. There shall be a rebuttable presumption of an unlawful
32 retaliatory personnel action under this section whenever an
33 employer takes adverse action against an employee within 90 days
34 of when that employee: files a complaint with the department or a
35 court alleging a violation of any provision of this section; informs
36 any person about an employer's alleged violation of this section;
37 cooperates with the department or other persons in the investigation
38 or prosecution of any alleged violation of this section; opposes any
39 policy, practice, or act that is unlawful under this section; or
40 informs any person of his or her rights under this section.

41 c. Protections of this section shall apply to any person who
42 mistakenly but in good faith alleges violations of this act.

43 d. Any violator of the provisions of this section shall be subject
44 to relevant penalties and remedies provided by the "New Jersey
45 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.),
46 including the penalties and remedies provided by section 25 of that
47 act (C.34:11-56a24) for discharge or other discrimination.

1 5. Any failure of an employer to make available or pay earned
2 sick leave as required by this act, or any other violation of this act,
3 shall be regarded as a failure to meet the wage payment
4 requirements of the “New Jersey State Wage and Hour Law,”
5 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
6 as the case may be, and all remedies, penalties or other measures
7 provided by that act for failure to pay wages or other violations of
8 that act shall be applicable, including, but not limited to, penalties
9 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22
10 and 34:11-56a24), and civil actions by employees pursuant to
11 section 26 of that act (C.34:11-56a25), except that an award to an
12 employee in a civil act shall include, in addition to the amount
13 provided pursuant to section 26 of that act (C.34:11-56a25), any
14 actual damages suffered by the employee as the result of the
15 violation plus an equal amount of liquidated damages.

16
17 6. Employers shall retain records documenting hours worked
18 by employees and earned sick leave taken by employees, for a
19 period of five years, and shall, upon demand, allow the department
20 access to those records to monitor compliance with the
21 requirements of this act. If an employee makes a claim that the
22 employer has failed to provide earned sick leave required by this act
23 and the employer has not maintained or retained adequate records
24 documenting hours worked by the employee and earned sick leave
25 taken by the employee or does not allow the department access to
26 the records, it shall be presumed that the employer has failed to
27 provide the earned sick leave, absent clear and convincing evidence
28 otherwise. In addition, the penalties provided by the “New Jersey
29 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)
30 for violations of the requirements of that act regarding the
31 maintaining and disclosure of records shall apply to violations of
32 the requirements of this section.

33
34 7. a. Employers shall provide notification, in a form issued by
35 the commissioner, to employees of their rights under this act,
36 including the amount of earned sick leave to which they are entitled
37 and the terms of its use, and remedies provided by this act to
38 employees if an employer fails to provide the required benefits or
39 retaliates against employees exercising their rights under this act.
40 Each covered employer shall conspicuously post the notification in
41 a place or places accessible to all employees in each of the
42 employer's workplaces. The employer shall also provide each
43 employee employed by the employer with a written copy of the
44 notification: not later than 30 days after the form of the notification
45 is issued; at the time of the employee's hiring, if the employee is
46 hired after the issuance; and at any time, when first requested by the
47 employee. The commissioner shall make the notifications available
48 in English, in Spanish, and any other language that the

1 commissioner determines is the first language of a significant
2 number of workers in the State and the employer shall use the
3 notification in English, Spanish or any other language for which the
4 commissioner has provided notifications and which is the first
5 language of a majority of the employer's workforce.

6 b. The commissioner shall advise any employee who files a
7 complaint pursuant to this section and is covered by a collective
8 bargaining agreement, that if the agreement provides for earned sick
9 leave, the employee may have a right to pursue a grievance under
10 the terms of the agreement.

11

12 8. a. This act provides minimum requirements pertaining to
13 earned sick leave and shall not be construed to preempt, limit, or
14 otherwise affect the applicability of any other federal, State or local
15 law, ordinance, regulation, requirement, policy, or standard that
16 provides rights or benefits to employees which are more favorable
17 to employees than those required by this act or which provide rights
18 or benefits to employees not covered by this act.

19 b. No provision of this act, or any regulations promulgated to
20 implement or enforce this act, shall be construed as:

21 (1) Requiring an employer to reduce, or justifying an employer
22 in reducing, rights or benefits provided by the employer pursuant to
23 an employer policy or collective bargaining agreement which are
24 more favorable to employees than those required by this act or
25 which provide rights or benefits to employees not covered by this
26 act;

27 (2) Preventing or prohibiting the employer from agreeing,
28 through a collective bargaining agreement or employer policy, to
29 provide rights or benefits which are more favorable to employees
30 than those required by this act or to provide rights or benefits to
31 employees not covered by this act; or

32 (3) Prohibiting an employer from establishing a policy whereby
33 an employee may donate unused accrued earned sick leave to
34 another employee or other employees.

35 ¹c. With respect to employees covered by a collective
36 bargaining agreement in effect at the time of the effective date of
37 this act, no provision of this act shall apply until the expiration of
38 the collective bargaining agreement.¹

39

40 9. The commissioner shall adopt rules and regulations pursuant
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
42 1 et seq.) to effectuate the purposes of this act.

43

44 10. This act shall take effect on the 120th day following
45 enactment.