

[First Reprint]  
**SENATE, No. 785**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**  
**District 37 (Bergen)**

**Co-Sponsored by:**

**Senators Codey, Rice, Cunningham, Lesniak, Sarlo, Gill and Stack**

**SYNOPSIS**

Concerns earned sick leave.

**CURRENT VERSION OF TEXT**

As reported by the Senate Labor Committee on June 22, 2015, with amendments.



**(Sponsorship Updated As Of: 6/9/2015)**

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 <sup>1</sup>"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 notifies  
13 the commissioner of the change in accordance with regulations  
14 promulgated pursuant to this act. The commissioner shall impose a  
15 benefit year on any employer that the commissioner determines is  
16 changing the benefit year at times or in ways that prevent the  
17 accrual or use of earned sick leave by an employee.<sup>1</sup>

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

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

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

29 "Commissioner" means the Commissioner of Labor and  
30 Workforce Development.

31 "Department" means the Department of Labor and Workforce  
32 Development.

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

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

43 "Domestic <sup>1</sup>or sexual<sup>1</sup> violence" means <sup>1</sup>stalking, any sexually  
44 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-

**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:

<sup>1</sup>Senate SLA committee amendments adopted June 22, 2015.

1 27.26), or<sup>1</sup> domestic violence as defined in section 3 of P.L.1991,  
2 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-6)<sup>1</sup> [,  
3 stalking, or any sexually violent offense, as defined in section 3 of  
4 P.L.1998, c.71 (C.30:4-27.26)]<sup>1</sup>.

5 "Employee" means an individual engaged in service to an  
6 employer in the business of the employer for compensation.  
7 <sup>1</sup>"Employee" does not include an employee performing service in  
8 the construction industry that is under contract pursuant to a  
9 collective bargaining agreement.<sup>1</sup>

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

13 "Family member" means a child, grandchild, sibling, spouse,  
14 domestic partner, civil union partner, parent, or grandparent of an  
15 employee, or a spouse, domestic partner, or civil union partner of a  
16 parent or grandparent of the employee, or a sibling of a spouse,  
17 domestic partner, or civil union partner of the employee. <sup>1</sup>"Family  
18 member" shall also mean, if an employee does not have a spouse,  
19 domestic partner, or civil union partner, any one person designated  
20 by the employee for whom the employee may use earned sick leave  
21 to care for as provided in paragraphs (2) and (3) of subsection a. of  
22 section 3 of this act, and this designation may be changed by the  
23 employee once annually, prior to the start of the preceding benefit  
24 year.<sup>1</sup>

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

31 "Parent" means a biological, adoptive, or foster parent,  
32 stepparent, or legal guardian of an employee or of the employee's  
33 spouse, domestic partner, or civil union partner, or a person who  
34 stood in loco parentis of the employee or the employee's spouse,  
35 domestic partner, or civil union partner when the employee, spouse  
36 or partner was a minor child.

37 "Retaliatory personnel action" means denial of any right  
38 guaranteed under this act and any threat, constructive discharge,  
39 suspension, demotion, unfavorable reassignment, refusal to  
40 promote, disciplinary action, sanction, or any other adverse action  
41 against an employee.

42 "Sibling" means a biological, foster, or adopted sibling of an  
43 employee.

44 "Small employer" means an employer who had, on average,  
45 fewer than 10 employees during the preceding calendar year, or  
46 during the current year if the employer had no employees during the  
47 preceding calendar year. Periods of time in which the employer had

1 no employees shall not be considered in determining the average  
2 number of employees. In determining whether an employer is a  
3 small employer, the number of employees shall include all  
4 individuals working for compensation on a full-time, part-time or  
5 temporary basis, including individuals made available to work at a  
6 workplace of the employer through a temporary help services firm.

7 "Spouse" means a husband or wife.

8

9 2. a. Each employer shall provide earned sick leave to each  
10 employee working for the employer in the State. For every 30 hours  
11 worked, the employee shall accrue one hour of earned sick leave<sup>1</sup>,  
12 except that an employer may provide an employee with the full  
13 complement of earned sick leave for a benefit year, as required  
14 under this section, on the first day of each benefit year in  
15 accordance with subsection c. or subsection d. of section 3 of this  
16 act<sup>1</sup>. The employer shall not be required to permit the employee to  
17 accrue at any one time, or carry forward from one <sup>1</sup>benefit<sup>1</sup> year to  
18 the next, more than 40 hours of earned sick leave if the employer is  
19 a small employer, or more than 72 hours of earned sick leave if the  
20 employer is not a small employer. Unless the employee has accrued  
21 earned sick leave prior to <sup>1</sup>January 1, 2014<sup>1</sup> the effective date of  
22 this act<sup>1</sup>, the earned sick leave shall begin to accrue on <sup>1</sup>January 1,  
23 2014 or<sup>1</sup> the effective date of this act for any employee hired before  
24 the effective date of this act and the employee shall be eligible to  
25 use the earned sick leave beginning<sup>1</sup> on the 90th <sup>1</sup>calendar<sup>1</sup> day  
26 after the hiring of the employee<sup>1</sup>, and<sup>1</sup> if hired after <sup>1</sup>January 1,  
27 2014<sup>1</sup> the effective date of this act, the earned sick leave shall begin  
28 to accrue upon the date of hire and the employee shall be eligible to  
29 use the earned sick leave beginning on the 90<sup>th</sup> calendar day after  
30 the hiring of the employee<sup>1</sup>, unless the employer agrees to an earlier  
31 date. The employee may use earned sick leave as it is accrued.

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

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

42 d. Upon the mutual consent of the employee and employer, an  
43 employee may voluntarily choose to work additional hours or shifts  
44 during the same or following pay period, in lieu of hours or shifts  
45 missed, but shall not be required to use accrued earned sick leave.  
46 An employer may not require, as a condition of an employee's using  
47 earned sick leave, that the employee search for or find a

1 replacement worker to cover the hours during which the employee  
2 is using earned sick leave.

3 <sup>1</sup>e. If an employee is transferred to a separate division, entity, or  
4 location, but remains employed by the same employer, then the  
5 employee shall be entitled to all earned sick leave accrued at the  
6 prior division, entity, or location, and shall be entitled to use the  
7 accrued earned sick leave as provided in this act. If an employee is  
8 terminated, laid off, furloughed, or otherwise separated from  
9 employment with the employer, any unused accrued earned sick  
10 leave shall be reinstated upon the re-hiring or reinstatement of the  
11 employee to that employment, within six months of termination,  
12 being laid off or furloughed, or separation, and prior employment  
13 with the employer shall be counted towards meeting the eligibility  
14 requirements set forth in this section.<sup>1</sup>

15  
16 3. a. An employer shall permit an employee to use the earned  
17 sick leave accrued pursuant to this act for any of the following:

18 (1) Time needed for diagnosis, care, or treatment of, or recovery  
19 from, an employee's mental or physical illness, injury or other  
20 adverse health condition, or for preventive medical care for the  
21 employee;

22 (2) Time needed for the employee to aid or care for a family  
23 member of the employee during diagnosis, care, or treatment of, or  
24 recovery from, the family member's mental or physical illness,  
25 injury or other adverse health condition, or during preventive  
26 medical care for the family member;

27 (3) Absence necessary due to circumstances resulting from the  
28 employee, or a family member of the employee, being a victim of  
29 domestic <sup>1</sup>or sexual<sup>1</sup> violence, if the leave is to allow the employee  
30 to obtain for the employee or the family member: medical attention  
31 needed to recover from physical or psychological injury or  
32 disability caused by domestic <sup>1</sup>or sexual<sup>1</sup> violence; services from a  
33 designated domestic violence agency or other victim services  
34 organization; psychological or other counseling; relocation; or legal  
35 services, including obtaining a restraining order or preparing for, or  
36 participating in, any civil or criminal legal proceeding related to the  
37 domestic <sup>1</sup>or sexual<sup>1</sup> violence; or

38 (4) Time during which the employee is not able to work because  
39 of a closure of the employee's workplace, or the school or place of  
40 care of a child of the employee, by order of a public official due to  
41 an epidemic or other public health emergency, or because of the  
42 issuance by a public health authority of a determination that the  
43 presence in the community of the employee, or a member of the  
44 employee's family in need of care by the employee, would  
45 jeopardize the health of others.

46 b. If an employee's need to use earned sick leave is foreseeable,  
47 an employer may require advance notice, not to exceed seven

1 calendar<sup>1</sup> days prior to the date the leave is to begin, of the  
2 intention to use the leave and its expected duration, and shall make  
3 a reasonable effort to schedule the use of earned sick leave in a  
4 manner that does not unduly disrupt the operations of the employer.  
5 If the reason for the leave is not foreseeable, an employer may  
6 require an employee to give notice of the intention as soon as  
7 practicable. For earned sick leave of three or more consecutive  
8 days, an employer may require reasonable documentation that the  
9 leave is being taken for the purpose permitted under subsection a. of  
10 this section. If the leave is permitted under paragraph (1) or (2) of  
11 subsection a. of this section, documentation signed by a health care  
12 professional who is treating the employee or the family member of  
13 the employee indicating the need for the leave and, if possible,  
14 number of days of leave, shall be considered reasonable  
15 documentation. If the leave is permitted under paragraph (3) of  
16 subsection a. of this section because of domestic or sexual<sup>1</sup>  
17 violence, any of the following shall be considered reasonable  
18 documentation of the domestic or sexual<sup>1</sup> violence: medical  
19 documentation; a law enforcement agency record or report; a court  
20 order; documentation that the perpetrator of the domestic or  
21 sexual<sup>1</sup> violence has been convicted of a domestic or sexual<sup>1</sup>  
22 violence offense; certification from a certified Domestic Violence  
23 Specialist or a representative of a designated domestic violence  
24 agency or other victim services organization; or other  
25 documentation or certification provided by a social worker,  
26 counselor, member of the clergy, shelter worker, health care  
27 professional, attorney, or other professional who has assisted the  
28 employee or family member in dealing with the domestic or  
29 sexual<sup>1</sup> violence. If the leave is permitted under paragraph (4) of  
30 subsection a. of this section, a copy of the order of the public  
31 official or the determination by the health authority shall be  
32 considered reasonable documentation. An employer who chooses to  
33 require documentation for earned sick leave shall pay all out-of-  
34 pocket expenses the employee incurs to obtain the documentation.

35 c. Nothing in this act shall be deemed to require an employer to  
36 provide earned sick leave for an employee's leave for purposes  
37 other than those identified in this section, or prohibit the employer  
38 from taking disciplinary action against an employee who uses  
39 earned sick leave for purposes other than those identified in this  
40 section. An employer may provide an offer to an employee for a  
41 payment of unused earned sick leave in the final month of the  
42 employer's benefit year. The employee shall choose, no later than  
43 10 calendar days from the date of the employer's offer, whether to  
44 accept a payment or decline a payment. If the employee agrees to  
45 receive a payment, the employee shall choose a payment for the full  
46 amount of unused earned sick leave or for 50 percent of the amount  
47 of unused earned sick leave. The payment amount shall be based on

1 the same rate of pay that the employee earns at the time of the  
2 payment. If the employee declines a payment for unused earned  
3 sick leave, or agrees to a payment for 50 percent of the amount of  
4 unused sick leave, the employee shall be entitled to carry forward  
5 any unused or unpaid earned sick leave to the proceeding benefit  
6 year as provided pursuant to subsection a. of section 2 of this act. If  
7 the employee agrees to a payment for the full amount of unused  
8 earned sick leave, the employee shall not be entitled to carry  
9 forward any earned sick leave to the proceeding benefit year  
10 pursuant to subsection a. of section 2 of this act.

11 d. If an employer foregoes the accrual process for earned sick  
12 leave hours pursuant to subsection a. of section 2 of this act and  
13 provides an employee with the full complement of earned sick leave  
14 for a benefit year on the first day of each benefit year, then the  
15 employer shall either provide to the employee a payment for the full  
16 amount of unused earned sick leave in the final month of the  
17 employer's benefit year or carry forward any unused sick leave to  
18 the next benefit year. The employer may pay the employee the full  
19 amount of unused earned sick leave in the final month of a benefit  
20 year pursuant to this subsection d. only if the employer forgoes,  
21 with respect to that employee, the accrual process for earned sick  
22 leave during the next benefit year.<sup>1</sup> Unless an employer policy or  
23 collective bargaining agreement provides for the payment of  
24 accrued earned sick leave upon termination, resignation, retirement  
25 or other separation from employment, an employee shall not be  
26 entitled under this section to payment of unused earned sick leave  
27 upon the separation from employment.

28 <sup>1</sup>**[d.] e.**<sup>1</sup> Any information an employer possesses regarding the  
29 health of an employee or any family member of the employee or  
30 domestic <sup>1</sup>or sexual<sup>1</sup> violence affecting an employee or employee's  
31 family member shall be treated as confidential and not disclosed  
32 except to the affected employee or with the written permission of  
33 the affected employee.

34  
35 4. a. No employer shall take retaliatory personnel action or  
36 discriminate against an employee because the employee requests or  
37 uses earned sick leave either in accordance with this act or the  
38 employer's own earned sick leave policy, as the case may be, or  
39 files a complaint with the commissioner alleging the employer's  
40 violation of any provision of this act, or informs any other person of  
41 their rights under this act. No employer shall count earned sick  
42 leave taken under this act as an absence that may result in the  
43 employee being subject to discipline, discharge, demotion,  
44 suspension, a loss or reduction of pay, or any other adverse action.

45 b. There shall be a rebuttable presumption of an unlawful  
46 retaliatory personnel action under this section whenever an  
47 employer takes adverse action against an employee within 90 days

1 of when that employee: files a complaint with the department or a  
2 court alleging a violation of any provision of this section; informs  
3 any person about an employer's alleged violation of this section;  
4 cooperates with the department or other persons in the investigation  
5 or prosecution of any alleged violation of this section; opposes any  
6 policy, practice, or act that is unlawful under this section; or  
7 informs any person of his or her rights under this section.

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

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

15  
16 5. Any failure of an employer to make available or pay earned  
17 sick leave as required by this act, or any other violation of this act,  
18 shall be regarded as a failure to meet the wage payment  
19 requirements of the "New Jersey State Wage and Hour Law,"  
20 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,  
21 as the case may be, and all remedies, penalties or other measures  
22 provided by that act for failure to pay wages or other violations of  
23 that act shall be applicable, including, but not limited to, penalties  
24 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22  
25 and 34:11-56a24), and civil actions by employees pursuant to  
26 section 26 of that act (C.34:11-56a25), except that an award to an  
27 employee in a civil act shall include, in addition to the amount  
28 provided pursuant to section 26 of that act (C.34:11-56a25), any  
29 actual damages suffered by the employee as the result of the  
30 violation plus an equal amount of liquidated damages.

31  
32 6. Employers shall retain records documenting hours worked  
33 by employees and earned sick leave taken by employees, for a  
34 period of five years, and shall, upon demand, allow the department  
35 access to those records to monitor compliance with the  
36 requirements of this act. If an employee makes a claim that the  
37 employer has failed to provide earned sick leave required by this act  
38 and the employer has not maintained or retained adequate records  
39 documenting hours worked by the employee and earned sick leave  
40 taken by the employee or does not allow the department access to  
41 the records, it shall be presumed that the employer has failed to  
42 provide the earned sick leave, absent clear and convincing evidence  
43 otherwise. In addition, the penalties provided by the "New Jersey  
44 State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.)  
45 for violations of the requirements of that act regarding the  
46 maintaining and disclosure of records shall apply to violations of  
47 the requirements of this section.



1       7. a. Employers shall provide notification, in a form issued by  
2 the commissioner, to employees of their rights under this act,  
3 including the amount of earned sick leave to which they are entitled  
4 and the terms of its use, and remedies provided by this act to  
5 employees if an employer fails to provide the required benefits or  
6 retaliates against employees exercising their rights under this act.  
7 Each covered employer shall conspicuously post the notification in  
8 a place or places accessible to all employees in each of the  
9 employer's workplaces. The employer shall also provide each  
10 employee employed by the employer with a written copy of the  
11 notification: not later than 30 days after the form of the notification  
12 is issued; at the time of the employee's hiring, if the employee is  
13 hired after the issuance; and at any time, when first requested by the  
14 employee. The commissioner shall make the notifications available  
15 in English, in Spanish, and any other language that the  
16 commissioner determines is the first language of a significant  
17 number of workers in the State and the employer shall use the  
18 notification in English, Spanish or any other language for which the  
19 commissioner has provided notifications and which is the first  
20 language of a majority of the employer's workforce.

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

26

27       8. a. <sup>1</sup> **【This act provides minimum requirements pertaining to**  
28 **earned sick leave and shall not be construed to preempt, limit, or**  
29 **otherwise affect the applicability of any other federal, State or local**  
30 **law, ordinance, regulation, requirement, policy, or standard that**  
31 **provides rights or benefits to employees which are more favorable**  
32 **to employees than those required by this act or which provide rights**  
33 **or benefits to employees not covered by this act.】** **The governing**  
34 **body of a county or municipality shall not, after the effective date**  
35 **of this act, adopt any ordinance, resolution, law, rule, or regulation**  
36 **regarding earned sick leave. The provisions of this act shall**  
37 **preempt any ordinance, resolution, law, rule, or regulation**  
38 **regarding earned sick leave unless adopted by the governing body**  
39 **of a county or municipality prior to the effective date of this act.**  
40 **This act shall not be construed to preempt, limit, or otherwise affect**  
41 **the applicability of any provision of an ordinance, resolution, law,**  
42 **rule, or regulation regarding earned sick leave adopted by a county**  
43 **or municipality prior to the effective date of this act that provides**  
44 **rights or benefits to employees which are more favorable to**  
45 **employees than those required by this act or that provides rights or**  
46 **benefits to employees not covered by this act, but shall preempt any**

1 provision which is less favorable to employees than is required by  
2 this act.<sup>1</sup>

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

5 (1) Requiring an employer to reduce, or justifying an employer  
6 in reducing, rights or benefits provided by the employer pursuant to  
7 an employer policy or collective bargaining agreement which are  
8 more favorable to employees than those required by this act or  
9 which provide rights or benefits to employees not covered by this  
10 act;

11 (2) Preventing or prohibiting the employer from agreeing,  
12 through a collective bargaining agreement or employer policy, to  
13 provide rights or benefits which are more favorable to employees  
14 than those required by this act or to provide rights or benefits to  
15 employees not covered by this act; <sup>1</sup>**[or]**<sup>1</sup>

16 (3) Prohibiting an employer from establishing a policy whereby  
17 an employee may donate unused accrued earned sick leave to  
18 another employee or other employees<sup>1</sup>; or

19 (4) Superseding any law providing collective bargaining rights  
20 for employees, or in any way reducing, diminishing, or adversely  
21 affecting those collective bargaining rights, or in any way reducing,  
22 diminishing, or affecting the obligations of employers under those  
23 laws.

24 c. With respect to employees covered by a collective  
25 bargaining agreement in effect at the time of the effective date of  
26 this act, no provision of this act shall apply until the expiration of  
27 the collective bargaining agreement.

28 d. A public employer shall not be subject of the provisions of  
29 this act with respect to its employees if the employer is subject to  
30 the provisions of any State statute or regulation regarding earned  
31 sick leave which are more favorable to those employees than the  
32 provisions of this act<sup>1</sup>.

33

34 9. The commissioner shall adopt rules and regulations pursuant  
35 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-  
36 1 et seq.) to effectuate the purposes of this act.

37

38 10. This act shall take effect on the 120th day following  
39 enactment.