

# ASSEMBLY, No. 1827

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman SHAVONDA E. SUMTER**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblyman Benson, Assemblywoman Jasey, Assemblymen Giblin, Caputo, Holley, Assemblywomen Quijano, Muoio and Assemblyman Eustace**

**SYNOPSIS**

Concerns earned sick leave.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 3/6/2018)**

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 "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.

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 Child Protection and Permanency in the Department of  
38 Children and Families and is under contract with the division for  
39 the express purpose of providing the services.

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

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

46 "Employee" means an individual engaged in service to an  
47 employer in the business of the employer for compensation.

48 "Employee" does not include an employee performing service in the

1 construction industry that is under contract pursuant to a collective  
2 bargaining agreement.

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

6 "Family member" means a child, grandchild, sibling, spouse,  
7 domestic partner, civil union partner, parent, or grandparent of an  
8 employee, or a spouse, domestic partner, or civil union partner of a  
9 parent or grandparent of the employee, or a sibling of a spouse,  
10 "domestic partner, or civil union partner of the employee. "Family  
11 member" shall also mean, if an employee does not have a spouse,  
12 domestic partner, or civil union partner, any one person designated  
13 by the employee for whom the employee may use earned sick leave  
14 to care for as provided in paragraphs (2) and (3) of subsection a. of  
15 section 3 of this act, and this designation may be changed by the  
16 employee once annually, prior to the start of the preceding benefit  
17 year.

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

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

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

35 "Sibling" means a biological, foster, or adopted sibling of an  
36 employee.

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

47 "Spouse" means a husband or wife.

1       2. a. Each employer shall provide earned sick leave to each  
2 employee working for the employer in the State. For every 30 hours  
3 worked, the employee shall accrue one hour of earned sick leave.  
4 The employer shall not be required to permit the employee to  
5 accrue at any one time, or carry forward from one benefit year to  
6 the next, more than 40 hours of earned sick leave if the employer is  
7 a small employer, or more than 72 hours of earned sick leave if the  
8 employer is not a small employer. Unless the employee has accrued  
9 earned sick leave prior to the effective date of this act, the earned  
10 sick leave shall begin to accrue on the effective date of this act for  
11 any employee hired before the effective date of this act and the  
12 employee shall be eligible to use the earned sick leave beginning on  
13 the 90th day after the hiring of the employee, and if hired after the  
14 effective date of this act, the earned sick leave shall begin to accrue  
15 upon the date of hire and the employee shall be eligible to use the  
16 earned sick leave beginning on the 90th day after the hiring of the  
17 employee, unless the employer agrees to an earlier date. The  
18 employee may use earned sick leave as it is accrued.

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

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

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

37       e. If an employee is transferred to a separate division, entity, or  
38 location, but remains employed by the same employer, then the  
39 employee shall be entitled to all earned sick leave accrued at the  
40 prior division, entity, or location, and shall be entitled to use the  
41 accrued earned sick leave as provided in this act. If an employee is  
42 terminated, laid off, furloughed, or otherwise separated from  
43 employment with the employer, any unused accrued earned sick  
44 leave shall be reinstated upon the re-hiring or reinstatement of the  
45 employee to that employment, within six months of termination,  
46 being laid off or furloughed, or separation, and prior employment  
47 with the employer shall be counted towards meeting the eligibility  
48 requirements set forth in this section.

- 1       3. a. An employer shall permit an employee to use the earned  
2 sick leave accrued pursuant to this act for any of the following:
- 3       (1) Time needed for diagnosis, care, or treatment of, or recovery  
4 from, an employee's mental or physical illness, injury or other  
5 adverse health condition, or for preventive medical care for the  
6 employee;
- 7       (2) Time needed for the employee to aid or care for a family  
8 member of the employee during diagnosis, care, or treatment of, or  
9 recovery from, the family member's mental or physical illness,  
10 injury or other adverse health condition, or during preventive  
11 medical care for the family member;
- 12       (3) Absence necessary due to circumstances resulting from the  
13 employee, or a family member of the employee, being a victim of  
14 domestic or sexual violence, if the leave is to allow the employee to  
15 obtain for the employee or the family member: medical attention  
16 needed to recover from physical or psychological injury or  
17 disability caused by domestic or sexual violence; services from a  
18 designated domestic violence agency or other victim services  
19 organization; psychological or other counseling; relocation; or legal  
20 services, including obtaining a restraining order or preparing for, or  
21 participating in, any civil or criminal legal proceeding related to the  
22 domestic or sexual violence; or
- 23       (4) Time during which the employee is not able to work because  
24 of a closure of the employee's workplace, or the school or place of  
25 care of a child of the employee, by order of a public official due to  
26 an epidemic or other public health emergency, or because of the  
27 issuance by a public health authority of a determination that the  
28 presence in the community of the employee, or a member of the  
29 employee's family in need of care by the employee, would  
30 jeopardize the health of others.
- 31       b. If an employee's need to use earned sick leave is foreseeable,  
32 an employer may require advance notice, not to exceed seven days  
33 prior to the date the leave is to begin, of the intention to use the  
34 leave and its expected duration, and shall make a reasonable effort  
35 to schedule the use of earned sick leave in a manner that does not  
36 unduly disrupt the operations of the employer. If the reason for the  
37 leave is not foreseeable, an employer may require an employee to  
38 give notice of the intention as soon as practicable. For earned sick  
39 leave of three or more consecutive days, an employer may require  
40 reasonable documentation that the leave is being taken for the  
41 purpose permitted under subsection a. of this section. If the leave is  
42 permitted under paragraph (1) or (2) of subsection a. of this section,  
43 documentation signed by a health care professional who is treating  
44 the employee or the family member of the employee indicating the  
45 need for the leave and, if possible, number of days of leave, shall be  
46 considered reasonable documentation. If the leave is permitted  
47 under paragraph (3) of subsection a. of this section because of  
48 domestic or sexual violence, any of the following shall be

1 considered reasonable documentation of the domestic or sexual  
2 violence: medical documentation; a law enforcement agency record  
3 or report; a court order; documentation that the perpetrator of the  
4 domestic or sexual violence has been convicted of a domestic or  
5 sexual violence offense; certification from a certified Domestic  
6 Violence Specialist or a representative of a designated domestic  
7 violence agency or other victim services organization; or other  
8 documentation or certification provided by a social worker,  
9 counselor, member of the clergy, shelter worker, health care  
10 professional, attorney, or other professional who has assisted the  
11 employee or family member in dealing with the domestic or sexual  
12 violence. If the leave is permitted under paragraph (4) of  
13 subsection a. of this section, a copy of the order of the public  
14 official or the determination by the health authority shall be  
15 considered reasonable documentation. An employer who chooses to  
16 require documentation for earned sick leave shall pay all out-of-  
17 pocket expenses the employee incurs to obtain the documentation.

18 c. Nothing in this act shall be deemed to require an employer to  
19 provide earned sick leave for an employee's leave for purposes  
20 other than those identified in this section, or prohibit the employer  
21 from taking disciplinary action against an employee who uses  
22 earned sick leave for purposes other than those identified in this  
23 section. An employer may provide an offer to an employee for a  
24 payment of unused earned sick leave in the final month of the  
25 employer's benefit year. The employee shall choose, no later than  
26 10 calendar days from the date of the employer's offer, whether to  
27 accept a payment or decline a payment. If the employee agrees to  
28 receive a payment, the employee shall choose a payment for the full  
29 amount of unused earned sick leave or for 50 percent of the amount  
30 of unused earned sick leave. The payment amount shall be based on  
31 the same rate of pay that the employee earns at the time of the  
32 payment. If the employee declines a payment for unused earned  
33 sick leave, or agrees to a payment for 50 percent of the amount of  
34 unused sick leave, the employee shall be entitled to carry forward  
35 any unused or unpaid earned sick leave to the proceeding benefit  
36 year as provided pursuant to subsection a. of section 2 of this act. If  
37 the employee agrees to a payment for the full amount of unused  
38 earned sick leave, the employee shall not be entitled to carry  
39 forward any earned sick leave to the proceeding benefit year  
40 pursuant to subsection a. of section 2 of this act. Unless an  
41 employer policy or collective bargaining agreement provides for the  
42 payment of accrued earned sick leave upon termination, resignation,  
43 retirement or other separation from employment, an employee shall  
44 not be entitled under this section to payment of unused earned sick  
45 leave upon the separation from employment.

46 d. Any information an employer possesses regarding the health  
47 of an employee or any family member of the employee or domestic  
48 or sexual violence affecting an employee or employee's family

1 member shall be treated as confidential and not disclosed except to  
2 the affected employee or with the written permission of the affected  
3 employee.

4  
5 4. a. No employer shall take retaliatory personnel action or  
6 discriminate against an employee because the employee requests or  
7 uses earned sick leave either in accordance with this act or the  
8 employer's own earned sick leave policy, as the case may be, or  
9 files a complaint with the commissioner alleging the employer's  
10 violation of any provision of this act, or informs any other person of  
11 their rights under this act. No employer shall count earned sick  
12 leave taken under this act as an absence that may result in the  
13 employee being subject to discipline, discharge, demotion,  
14 suspension, a loss or reduction of pay, or any other adverse action.

15 b. There shall be a rebuttable presumption of an unlawful  
16 retaliatory personnel action under this section whenever an  
17 employer takes adverse action against an employee within 90 days  
18 of when that employee: files a complaint with the department or a  
19 court alleging a violation of any provision of this section; informs  
20 any person about an employer's alleged violation of this section;  
21 cooperates with the department or other persons in the investigation  
22 or prosecution of any alleged violation of this section; opposes any  
23 policy, practice, or act that is unlawful under this section; or  
24 informs any person of his or her rights under this section.

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

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

32  
33 5. Any failure of an employer to make available or pay earned  
34 sick leave as required by this act, or any other violation of this act,  
35 shall be regarded as a failure to meet the wage payment  
36 requirements of the "New Jersey State Wage and Hour Law,"  
37 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,  
38 as the case may be, and all remedies, penalties or other measures  
39 provided by that act for failure to pay wages or other violations of  
40 that act shall be applicable, including, but not limited to, penalties  
41 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22  
42 and 34:11-56a24), and civil actions by employees pursuant to  
43 section 26 of that act (C.34:11-56a25), except that an award to an  
44 employee in a civil act shall include, in addition to the amount  
45 provided pursuant to section 26 of that act (C.34:11-56a25), any  
46 actual damages suffered by the employee as the result of the  
47 violation plus an equal amount of liquidated damages.

1       6. Employers shall retain records documenting hours worked  
2 by employees and earned sick leave taken by employees, for a  
3 period of five years, and shall, upon demand, allow the department  
4 access to those records to monitor compliance with the  
5 requirements of this act. If an employee makes a claim that the  
6 employer has failed to provide earned sick leave required by this act  
7 and the employer has not maintained or retained adequate records  
8 documenting hours worked by the employee and earned sick leave  
9 taken by the employee or does not allow the department access to  
10 the records, it shall be presumed that the employer has failed to  
11 provide the earned sick leave, absent clear and convincing evidence  
12 otherwise. In addition, the penalties provided by the “New Jersey  
13 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)  
14 for violations of the requirements of that act regarding the  
15 maintaining and disclosure of records shall apply to violations of  
16 the requirements of this section.

17  
18       7. a. Employers shall provide notification, in a form issued by  
19 the commissioner, to employees of their rights under this act,  
20 including the amount of earned sick leave to which they are entitled  
21 and the terms of its use, and remedies provided by this act to  
22 employees if an employer fails to provide the required benefits or  
23 retaliates against employees exercising their rights under this act.  
24 Each covered employer shall conspicuously post the notification in  
25 a place or places accessible to all employees in each of the  
26 employer's workplaces. The employer shall also provide each  
27 employee employed by the employer with a written copy of the  
28 notification: not later than 30 days after the form of the notification  
29 is issued; at the time of the employee's hiring, if the employee is  
30 hired after the issuance; and at any time, when first requested by the  
31 employee. The commissioner shall make the notifications available  
32 in English, in Spanish, and any other language that the  
33 commissioner determines is the first language of a significant  
34 number of workers in the State and the employer shall use the  
35 notification in English, Spanish or any other language for which the  
36 commissioner has provided notifications and which is the first  
37 language of a majority of the employer's workforce.

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

43  
44       8. a. This act provides minimum requirements pertaining to  
45 earned sick leave and shall not be construed to preempt, limit, or  
46 otherwise affect the applicability of any other federal, State or local  
47 law, ordinance, regulation, requirement, policy, or standard that  
48 provides rights or benefits to employees which are more favorable



1 to employees than those required by this act or which provide rights  
2 or benefits to employees not covered by this act.

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;

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; 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

29 9. The commissioner shall adopt rules and regulations pursuant  
30 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-  
31 1 et seq.) to effectuate the purposes of this act.

32

33 10. This act shall take effect on the 120th day following  
34 enactment.

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#### STATEMENT

38

39 This bill requires each employer to provide earned sick leave to  
40 each employee it employs in the State, except for construction  
41 employees that are under contract pursuant to a collective bargaining  
42 agreement. The employee accrues one hour of earned sick leave for  
43 every 30 hours worked. The employer is not required to permit the  
44 employee to accrue at any one time, or carry forward from one year to  
45 the next, more than 40 hours of earned sick leave if the employer has  
46 less than 10 employees in the State, or more than 72 hours of earned  
47 sick leave if the employer has 10 or more employees. Unless the  
48 employee accrued earned sick leave with the employer before the

1 effective date of the bill, for an employee hired prior to the effective  
2 date of the bill, the leave accrues beginning on that date and the  
3 employee may use the leave beginning on the 90th day after the  
4 employee is hired, and for an employee hired after the effective date of  
5 the bill, the leave accrues beginning on the date of hire and the  
6 employee may use the leave beginning on the 90th day after the  
7 employee is hired, unless the employer agrees to an earlier date.

8 The bill provides that an employer is in compliance with the  
9 requirements of the bill with respect to providing earned sick leave if  
10 the employer offers any other fully paid leave that may be used for the  
11 same purposes provided by the bill in the same manner provided by  
12 the bill, and is accrued at a rate equal to or greater than the rate  
13 required by the bill. The employer is required to pay the employee for  
14 earned sick leave at the same rate of pay with the same benefits as the  
15 employee normally earns, except that the pay rate may not be less than  
16 the State minimum wage. If an employee is transferred to a separate  
17 division, entity, or location, but remains employed by the same  
18 employer, the employee is entitled to retain and use all earned sick  
19 leave accrued at the prior division, entity, or location.

20 Earned sick leave may be used for:

- 21 1. Time needed for diagnosis, care, or treatment of, or recovery  
22 from, an employee's mental or physical illness, injury or other adverse  
23 health condition, or for preventive medical care for the employee;
- 24 2. Time needed for the employee to care for a family member  
25 during diagnosis, care, or treatment of, or recovery from, the family  
26 member's mental or physical illness, injury or other adverse health  
27 condition, or preventive medical care for the family member; or
- 28 3. Absence needed due to circumstances resulting from the  
29 employee or a family member being a victim of domestic or sexual  
30 violence, if the leave is to obtain medical attention, counseling,  
31 relocation, legal or other services.

32 The bill prohibits retaliatory personnel actions against an employee  
33 for the use or requested use of earned sick leave or for filing of a  
34 complaint for an employer violation. The bill sets requirements for  
35 record keeping and for notifying workers of their rights under the bill.  
36 It provides for penalties and other remedies for non-compliance with  
37 the requirements of the bill, based on the penalties and remedies for  
38 non-compliance with the "New Jersey State Wage and Hour Law,"  
39 P.L.1966, c.113 (C.34:11-56a et seq.).

40 The bill specifies that it is intended to set minimum standards for  
41 earned sick leave, but not to prevent any employer policies, collective  
42 bargaining agreements or other laws or ordinances which set higher  
43 standards. With respect to employees covered by a collective  
44 bargaining agreement in effect at the time of the effective date of the  
45 bill, no provision of the bill will apply until the expiration of the  
46 collective bargaining agreement.