

ASSEMBLY, No. 4209

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 1, 2020

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblywoman Reynolds-Jackson, Assemblyman Giblin and

Assemblywoman Timberlake

SYNOPSIS

Concerns earned sick leave benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/5/2021)

1 AN ACT concerning earned sick leave benefits and amending
2 P.L.2018, c.10.

3

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

6

7 1. Section 1 of P.L.2018, c.10 (C.34:11D-1) is amended to read
8 as follows:

9 1. For the purposes of this act:

10 "Benefit year" means the period of 12 consecutive months
11 established by an employer in which an employee shall accrue and
12 use earned sick leave as provided pursuant to section 2 of this act,
13 provided that once the starting date of the benefit year is established
14 by the employer it shall not be changed unless the employer notifies
15 the commissioner of the change in accordance with regulations
16 promulgated pursuant to this act. The commissioner shall impose a
17 benefit year on any employer that the commissioner determines is
18 changing the benefit year at times or in ways that prevent the
19 accrual or use of earned sick leave by an employee.

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

24 "Child" means a biological, adopted, or foster child, stepchild or
25 legal ward of an employee, child of a domestic partner or civil
26 union partner of the employee.

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 or sexual violence" means stalking, any sexually
41 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
42 27.26), or 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-16).

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

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.

1 "Employee" means an individual engaged in service to an
2 employer in the business of the employer for compensation.
3 "Employee" does not include an employee performing service in the
4 construction industry that is under contract pursuant to a collective
5 bargaining agreement, **【**or a per diem health care employee,**】** or a
6 public employee who is provided with sick leave with full pay
7 pursuant to any other law, rule, or regulation of this State.

8 "Employer" means any person, firm, business, educational
9 institution, nonprofit agency, corporation, limited liability company
10 or other entity that employs employees in the State, including a
11 temporary help service firm. In the case of a temporary help service
12 firm placing an employee with client firms, earned sick leave shall
13 accrue on the basis of the total time worked on assignment with the
14 temporary help service firm, not separately for each client firm to
15 which the employee is assigned. "Employer" does not include a
16 public employer that is required to provide its employees with sick
17 leave with full pay pursuant to any other law, rule or regulation of
18 this State.

19 "Essential employee" means an employee in the public or private
20 sector who, during a state of emergency:

21 (1) is a public safety worker or first responder, including any
22 fire, police or other emergency responders;

23 (2) is involved in providing medical and other healthcare
24 services, emergency transportation, social services, and other care
25 services, including services provided in health care facilities,
26 residential facilities, or homes;

27 (3) performs functions which involve physical proximity to
28 members of the public and are essential to the public's health,
29 safety, and welfare, including transportation services, financial
30 services, and the production, preparation, storage, sale, and
31 distribution of essential goods such as food, beverages, medicine,
32 fuel, and supplies for conducting essential business and work at
33 home; or

34 (4) is any other employee deemed an essential employee by the
35 public authority declaring the state of emergency.

36 If the state of emergency does not apply to the entire State, an
37 employee shall be regarded as an essential employee only if the
38 employee is working in the area subject to the state of emergency.

39 "Family member" means a child, grandchild, sibling, spouse,
40 domestic partner, civil union partner, parent, or grandparent of an
41 employee, or a spouse, domestic partner, or civil union partner of a
42 parent or grandparent of the employee, or a sibling of a spouse,
43 domestic partner, or civil union partner of the employee, or any
44 other individual related by blood to the employee or whose close
45 association with the employee is the equivalent of a family
46 relationship.

47 "Health care professional" means any person licensed under
48 federal, State, or local law, or the laws of a foreign nation, to

1 provide health care services, or any other person who has been
2 authorized to provide health care by a licensed health care
3 professional, including but not limited to doctors, nurses and
4 emergency room personnel.

5 "Parent" means a biological, adoptive, or foster parent,
6 stepparent, or legal guardian of an employee or of the employee's
7 spouse, domestic partner, or civil union partner, or a person who
8 stood in loco parentis of the employee or the employee's spouse,
9 domestic partner, or civil union partner when the employee, spouse
10 or partner was a minor child.

11 **["Per diem health care employee" means any:**

12 (1) health care professional licensed in the State of New Jersey
13 employed by a health care facility licensed by the New Jersey
14 Department of Health;

15 (2) any individual that is in the process of applying to the New
16 Jersey Division of Consumer Affairs for a license to provide health
17 care services who is employed by a health care facility licensed by
18 the New Jersey Department of Health; or

19 (3) any first aid, rescue or ambulance squad member employed
20 by a hospital system.

21 An employee listed in paragraphs (1), (2), and (3) of this
22 definition shall be considered a per diem health care employee if
23 that employee:

24 (1) works on an as-needed basis to supplement a health care
25 employee, or to replace or substitute for a temporarily absent health
26 care employee;

27 (2) works only when the employee indicates that the employee
28 is available to work, and has no obligation to work when the
29 employee does not indicate availability; and

30 (3) either:

31 (a) has the opportunity for full time or part time employment in
32 their scope of practice under that healthcare provider which offers
33 paid time off benefits greater in length than provided under this act
34 under the terms of employment; or

35 (b) has waived earned sick leave benefits as provided under this
36 act under terms of employment for alternative benefits or
37 consideration.

38 "Per diem health care employee" shall not include any individual
39 who is certified as a homemaker-home health aide. **】**

40 "Retaliatory personnel action" means denial of any right
41 guaranteed under this act and any threat, discharge, including a
42 constructive discharge, suspension, demotion, unfavorable
43 reassignment, refusal to promote, disciplinary action, sanction,
44 reduction of work hours, reporting or threatening to report the
45 actual or suspected immigrant status of an employee or the
46 employee's family, or any other adverse action against an employee.

47 "Sibling" means a biological, foster, or adopted sibling of an
48 employee.

1 "Spouse" means a husband or wife.

2 "State of emergency" means a natural or human-made disaster or
3 emergency, including an epidemic or other health emergency, for
4 which a state of emergency has been declared by the President of
5 the United States, the Governor, a municipal emergency
6 management coordinator, or other public authority permitted by law
7 to declare a state of emergency.

8 (cf: P.L.2018, c.10, s.1)

9

10 2. Section 2 of P.L.2018, c.10 (C.34:11D-2) is amended to read
11 as follows:

12 2. a. Each employer shall provide earned sick leave to each
13 employee working for the employer in the State. For every 30 hours
14 worked, the employee shall accrue one hour of earned sick leave,
15 except that an employer may provide an employee with the full
16 complement of earned sick leave for a benefit year, as required
17 under this section, on the first day of each benefit year in
18 accordance with subsection c. or subsection d. of section 3 of this
19 act. The employer shall not be required to permit the employee to
20 accrue or use in any benefit year, or carry forward from one benefit
21 year to the next, more than 40 hours, or, after March 1, 2020, more
22 than 56 hours, of earned sick leave, except that if an employee
23 works as an essential employee during a state of emergency
24 occurring during a benefit year of the employee and uses earned
25 sick leave during the benefit year and during or after the state of
26 emergency, the employee shall be eligible for an amount of earned
27 sick leave of up to 120 hours for that year, which shall be in
28 addition to any hours of earned sick leave accrued by the employee,
29 provided that none of the 120 hours shall be carried forward to the
30 following benefit year. Unless the employee has accrued earned
31 sick leave prior to the effective date of this act, the earned sick
32 leave shall begin to accrue on the effective date of this act for any
33 employee who is hired and commences employment before the
34 effective date of this act and the employee shall be eligible to use
35 the earned sick leave **【beginning on the 120th calendar day】**
36 immediately after the employee commences employment, and if the
37 employment commences after the effective date of this act, the
38 earned sick leave shall begin to accrue upon the date that
39 employment commences and the employee shall be eligible to use
40 the earned sick leave beginning **【on the 120th calendar day】**
41 immediately after the employee commences employment**【,** unless
42 the employer agrees to an earlier date**】.** The employee may
43 subsequently use earned sick leave as soon as it is accrued.

44 b. An employer shall be in compliance with this section if the
45 employer offers paid time off, which is fully paid and shall include,
46 but is not limited to personal days, vacation days, and sick days,
47 and may be used for the purposes of section 3 of this act in the

1 manner provided by this act, and is accrued at a rate equal to or
2 greater than the rate described in this section.

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

8 d. Upon the mutual consent of the employee and employer, an
9 employee may voluntarily choose to work additional hours or shifts
10 during the same or following pay period, in lieu of hours or shifts
11 missed, but shall not be required to work additional hours or shifts
12 or use accrued earned sick leave. An employer may not require, as
13 a condition of an employee's using earned sick leave, that the
14 employee search for or find a replacement worker to cover the
15 hours during which the employee is using earned sick leave.

16 e. If an employee is transferred to a separate division, entity, or
17 location, but remains employed by the same employer, then the
18 employee shall be entitled to all earned sick leave accrued at the
19 prior division, entity, or location, and shall be entitled to use the
20 accrued earned sick leave as provided in this act. If an employee is
21 terminated, laid off, furloughed, or otherwise separated from
22 employment with the employer, any unused accrued earned sick
23 leave shall be reinstated upon the re-hiring or reinstatement of the
24 employee to that employment, within six months of termination,
25 being laid off or furloughed, or separation, and prior employment
26 with the employer shall be counted towards meeting the eligibility
27 requirements set forth in this section. When a different employer
28 succeeds or takes the place of an existing employer, all employees
29 of the original employer who remain employed by the successor
30 employer are entitled to all of the earned sick leave they accrued
31 when employed by the original employer, and are entitled to use the
32 earned sick leave previously accrued immediately.

33 f. An employer may choose the increments in which its
34 employees may use earned sick leave, provided that the largest
35 increment of earned sick leave that an employee may be required to
36 use for each shift for which earned sick leave is used shall be the
37 number of hours the employee was scheduled to work during that
38 shift.

39 (cf: P.L.2018, c.10, s.2)

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41 3. Section 3 of P.L.2018, c.10 (C.34:11D-3) is amended to read
42 as follows:

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

45 (1) time needed for diagnosis, care, or treatment of, or recovery
46 from, an employee's mental or physical illness, injury or other
47 adverse health condition, or for preventive medical care for the
48 employee;

1 (2) time needed for the employee to aid or care for a family
2 member of the employee during diagnosis, care, or treatment of, or
3 recovery from, the family member's mental or physical illness,
4 injury or other adverse health condition, or during preventive
5 medical care for the family member;

6 (3) absence necessary due to circumstances resulting from the
7 employee, or a family member of the employee, being a victim of
8 domestic or sexual violence, if the leave is to allow the employee to
9 obtain for the employee or the family member: medical attention
10 needed to recover from physical or psychological injury or
11 disability caused by domestic or sexual violence; services from a
12 designated domestic violence agency or other victim services
13 organization; psychological or other counseling; relocation; or legal
14 services, including obtaining a restraining order or preparing for, or
15 participating in, any civil or criminal legal proceeding related to the
16 domestic or sexual violence;

17 (4) time during which the employee is not able to work because
18 of:

19 (a) a closure of the employee's workplace, or the school or place
20 of care of a child of the employee by order of a public official or
21 because of a state of emergency declared by the Governor, due to an
22 epidemic or other public health emergency;

23 (b) the declaration of a state of emergency by the Governor, or
24 the issuance by a health care provider or the Commissioner of
25 Health or other public health authority of a determination that the
26 presence in the community of the employee, or a member of the
27 employee's family in need of care by the employee, would
28 jeopardize the health of others;

29 (c) during a state of emergency declared by the Governor, or
30 upon the recommendation, direction, or order of a healthcare
31 provider or the Commissioner of Health or other authorized public
32 official, the employee undergoes isolation or quarantine, or cares
33 for a family member in quarantine, as a result of suspected exposure
34 to a communicable disease and a finding by the provider or
35 authority that the presence in the community of the employee or
36 family member would jeopardize the health of others; or

37 (5) time needed by the employee in connection with a child of
38 the employee to attend a school-related conference, meeting,
39 function or other event requested or required by a school
40 administrator, teacher, or other professional staff member
41 responsible for the child's education, or to attend a meeting
42 regarding care provided to the child in connection with the child's
43 health conditions or disability; or

44 (6) bereavement time, including time attending a funeral, for the
45 death of family member of the employee of not more than two days
46 taken at any time within the one-month period immediately
47 following the death.

1 b. If an employee's need to use earned sick leave is foreseeable,
2 an employer may require advance notice, not to exceed seven
3 calendar days prior to the date the leave is to begin, of the intention
4 to use the leave and its expected duration, and shall make a
5 reasonable effort to schedule the use of earned sick leave in a
6 manner that does not unduly disrupt the operations of the employer.
7 If the reason for the leave is not foreseeable, an employer may
8 require an employee to give notice of the intention as soon as
9 practicable, if the employer has notified the employee of this
10 requirement. Employers may prohibit employees from using
11 foreseeable earned sick leave on certain dates, and require
12 reasonable documentation if sick leave that is not foreseeable is
13 used during those dates. For earned sick leave of **【three or】** more
14 than five consecutive days, an employer may require reasonable
15 documentation that the leave is being taken for the purpose
16 permitted under subsection a. of this section. If the leave is
17 permitted under paragraph (1) or (2) of subsection a. of this section,
18 documentation **【signed】** provided by a health care professional who
19 is treating the employee or the family member of the employee
20 indicating the need for the leave and, if possible, number of days of
21 leave, shall be considered reasonable documentation. For the
22 purposes of this documentation, any evaluation and determination
23 of treatment needed for the health condition of the employee or
24 family member may be conducted by telephone, video or other
25 remote means deemed appropriate by the health care professional if
26 isolation of the employee or family member is found by the
27 professional to be needed to reduce health hazards to others,
28 including health providers or caregivers. If the leave is permitted
29 under paragraph (3) of subsection a. of this section because of
30 domestic or sexual violence, any of the following shall be
31 considered reasonable documentation of the domestic or sexual
32 violence: medical documentation; a law enforcement agency record
33 or report; a court order; documentation that the perpetrator of the
34 domestic or sexual violence has been convicted of a domestic or
35 sexual violence offense; certification from a certified Domestic
36 Violence Specialist or a representative of a designated domestic
37 violence agency or other victim services organization; or other
38 documentation or certification provided by a social worker,
39 counselor, member of the clergy, shelter worker, health care
40 professional, attorney, or other professional who has assisted the
41 employee or family member in dealing with the domestic or sexual
42 violence. If the leave is permitted under paragraph (4) of
43 subsection a. of this section, a copy of the order of the public
44 official or the determination by the health authority shall be
45 considered reasonable documentation.

46 c. Nothing in this act shall be deemed to require an employer to
47 provide earned sick leave for an employee's leave for purposes
48 other than those identified in this section, or prohibit the employer

1 from taking disciplinary action against an employee who uses
2 earned sick leave for purposes other than those identified in this
3 section. An employer may provide an offer to an employee for a
4 payment of unused earned sick leave in the final month of the
5 employer's benefit year. The employee shall choose, no later than
6 10 calendar days from the date of the employer's offer, whether to
7 accept a payment or decline a payment. If the employee agrees to
8 receive a payment, the employee shall choose a payment for the full
9 amount of unused earned sick leave or for 50 percent of the amount
10 of unused earned sick leave. The payment amount shall be based on
11 the same rate of pay that the employee earns at the time of the
12 payment. If the employee declines a payment for unused earned
13 sick leave, or agrees to a payment for 50 percent of the amount of
14 unused sick leave, the employee shall be entitled to carry forward
15 any unused or unpaid earned sick leave to the proceeding benefit
16 year as provided pursuant to subsection a. of section 2 of this act. If
17 the employee agrees to a payment for the full amount of unused
18 earned sick leave, the employee shall not be entitled to carry
19 forward any earned sick leave to the proceeding benefit year
20 pursuant to subsection a. of section 2 of this act.

21 d. If an employer foregoes the accrual process for earned sick
22 leave hours pursuant to subsection a. of section 2 of this act and
23 provides an employee with the full complement of earned sick leave
24 for a benefit year on the first day of each benefit year, then the
25 employer shall either provide to the employee a payment for the full
26 amount of unused earned sick leave in the final month of the
27 employer's benefit year or carry forward any unused sick leave to
28 the next benefit year. The employer may pay the employee the full
29 amount of unused earned sick leave in the final month of a benefit
30 year pursuant to this subsection only if the employer forgoes, with
31 respect to that employee, the accrual process for earned sick leave
32 during the next benefit year. Unless an employer policy or
33 collective bargaining agreement provides for the payment of
34 accrued earned sick leave upon termination, resignation, retirement
35 or other separation from employment, an employee shall not be
36 entitled under this section to payment of unused earned sick leave
37 upon the separation from employment.

38 e. Any information an employer possesses regarding the health
39 of an employee or any family member of the employee or domestic
40 or sexual violence affecting an employee or employee's family
41 member shall be treated as confidential and not disclosed except to
42 the affected employee or with the written permission of the affected
43 employee.

44 (cf: P.L.2020, c.17, s.1)

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46 4. This act shall take effect immediately.

STATEMENT

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The bill make the following modifications in P.L.2018, c.10 (C.34:11D-1 et seq.):

1. Eliminates the exclusion of per diem health care employees from the earned sick leave benefits provided by that law.

2. Increases, from 40 to 56, the number of hours of earned sick leave a worker may annually accrue and use, and carry forward from one year to another, and, if the worker is an essential worker in a declared state of emergency, provides an additional 120 hours of sick leave that can be used during and after the state of emergency, but not carried forward from one year to another.

3. Provides two days of bereavement time, including time attending a funeral, for the death of a family member of the employe

4. Eliminates the 120-day period after hiring in which an employee is not eligible to use accrued earned sick leave.

5. Increases, from two days to five days, the period of time after which an employer may require documentation by a health professional of the need for leave, and specifies

that, for the purpose of documentation, if isolation is needed to reduce health hazards, the determination by the professional of the need for leave may be conducted by telephone, video or other remote means.