

[First Reprint]

ASSEMBLY, No. 4483

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 30, 2020

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Co-Sponsored by:

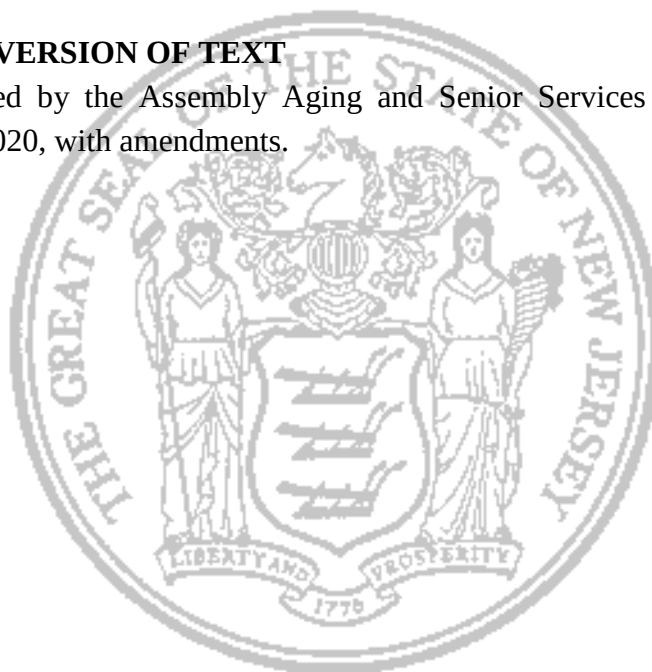
**Assemblywomen Speight, Vainieri Huttle, Reynolds-Jackson and
Assemblyman Johnson**

SYNOPSIS

Allows long-term care facility employees to accrue paid sick leave.

CURRENT VERSION OF TEXT

As reported by the Assembly Aging and Senior Services Committee on August 24, 2020, with amendments.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning long-term care facility staff 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]** P.L.2018, c.10 (C.34:11D-
10 1 et seq.):

11 "Benefit year" means the period of 12 consecutive months
12 established by an employer in which an employee shall accrue and
13 use earned sick leave as provided pursuant to section 2 of **[this act]**
14 P.L.2018, c.10 (C.34:11D-2), provided that once the starting date of
15 the benefit year is established by the employer it shall not be
16 changed unless the employer notifies the commissioner of the
17 change in accordance with regulations promulgated pursuant to
18 **[this act]** P.L.2018, c.10 (C.34:11D-1 et seq.). The commissioner
19 shall impose a benefit year on any employer that the commissioner
20 determines is changing the benefit year at times or in ways that
21 prevent the accrual or use of earned sick leave by an employee.

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

26 "Child" means **'[a]'** any¹ biological 'child'¹, adopted 'child'¹,
27 '[or]'¹ foster child, stepchild '.'¹ or legal ward of an employee, 'and
28 any¹ child of a domestic partner or civil union partner of **'[the]'** an¹
29 employee.

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

32 "Commissioner" means the Commissioner of Labor and
33 Workforce Development.

34 "Department" means the Department of Labor and Workforce
35 Development.

36 "Designated domestic violence agency" means a county-wide
37 organization with a primary purpose to provide services to victims
38 of domestic violence, and which provides services that conform to
39 the core domestic violence services profile as defined by the
40 Division of Child Protection and Permanency in the Department of
41 Children and Families and is under contract with the division for
42 the express purpose of providing the services.

43 "Domestic or sexual violence" means stalking, any sexually
44 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
45 27.26), or domestic violence as defined in section 3 of P.L.1991,
46 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

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 ASE committee amendments adopted August 24, 2020.

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

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

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, including a
13 temporary help service firm. In the case of a temporary help service
14 firm placing an employee with client firms, earned sick leave shall
15 accrue on the basis of the total time worked on assignment with the
16 temporary help service firm, not separately for each client firm to
17 which the employee is assigned. "Employer" does not include a
18 public employer that is required to provide its employees with sick
19 leave with full pay pursuant to any other law, rule or regulation of
20 this State.

21 "Family member" means a child, grandchild, sibling, spouse,
22 domestic partner, civil union partner, parent, or grandparent of an
23 employee, or a spouse, domestic partner, or civil union partner of a
24 parent or grandparent of the employee, or a sibling of a spouse,
25 domestic partner, or civil union partner of the employee, or any
26 other individual related by blood to the employee or whose close
27 association with the employee is the equivalent of a family
28 relationship.

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

35 "Long-term care facility" means a nursing home, assisted living
36 residence, comprehensive personal care home, residential health
37 care facility, or dementia care home licensed pursuant to P.L.1971,
38 c.136 (C.26:2H-1 et seq.).

39 "Parent" means a biological, adoptive, or foster parent,
40 stepparent, or legal guardian of an employee or of the employee's
41 spouse, domestic partner, or civil union partner, or a person who
42 stood in loco parentis of the employee or the employee's spouse,
43 domestic partner, or civil union partner when the employee, spouse
44 or partner was a minor child.

45 "Per diem health care employee" means any:

46 (1) health care professional licensed in the State of New Jersey
47 employed by a health care facility licensed by the New Jersey
48 Department of Health;

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

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

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

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

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

(3) either:

(a) has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under **[this act]** P.L.2018, c.10 (C.34:11D-1 et seq.) under the terms of employment; or

(b) has waived earned sick leave benefits as provided under **[this act]** P.L.2018, c.10 (C.34:11D-1 et seq.) under terms of employment for alternative benefits or consideration.

"Per diem health care employee" shall not include any individual who is certified as a homemaker-home health aide or any individual who is employed by ¹or placed with¹ a long-term care facility.

"Retaliatory personnel action" means denial of any right guaranteed under **[this act]** P.L.2018, c.10 (C.34:11D-1 et seq.) and any threat, discharge, including a constructive discharge, suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee's family, or any other adverse action against an employee.

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

"Spouse" means a husband or wife.

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

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

2. a. (1) Each employer shall provide earned sick leave to each employee working for the employer in the State. For every 30 hours worked, the employee shall accrue one hour of earned sick leave, except that an employer may provide an employee with the full complement of earned sick leave for a benefit year, as required

under this section, on the first day of each benefit year in accordance with subsection c. or subsection d. of section 3 of ~~【this act】~~ P.L.2018, c.10 (C.34:11D-3). The employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned sick leave.

~~【Unless】~~ (2) Except as provided in paragraph (3) of this subsection, unless the employee has accrued earned sick leave prior to the effective date of ~~【this act】~~ P.L.2018, c.10 (C.34:11D-1 et seq.), the earned sick leave shall begin to accrue on the effective date of ~~【this act】~~ P.L.2018, c.10 (C.34:11D-1 et seq.) for any employee who is hired and commences employment before the effective date of ~~【this act】~~ P.L.2018, c.10 (C.34:11D-1 et seq.) and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, and if the employment commences after the effective date of ~~【this act】~~ P.L.2018, c.10 (C.34:11D-1 et seq.), the earned sick leave shall begin to accrue upon the date that employment commences and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

(3) In the case of an employee ~~‘【of】~~ employed by or placed with¹ a long-term care facility, unless the employee has accrued earned sick leave prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the earned sick leave shall begin to accrue on the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) for any employee who is hired and commences employment before the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), ~~‘【and】’~~ the employee shall additionally be credited with earned sick leave for any hours worked between March 9, 2020 and the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) ~~‘【. The】~~ and the¹ employee shall be eligible to use the earned sick leave beginning on the ~~‘【30th】~~ ¹60th¹ calendar day after the employee commences employment ~~‘【, and if】~~ . If¹ the employment ¹or placement¹ commences after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the earned sick leave shall begin to accrue upon the date that employment commences and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

b. An employer shall be in compliance with this section if the employer offers paid time off, which is fully paid and shall include,

1 but is not limited to personal days, vacation days, and sick days,
2 and may be used for the purposes of section 3 of **【this act】**
3 P.L.2018, c.10 (C.34:11D-3) in the manner provided by **【this act】**
4 P.L.2018, c.10 (C.34:11D-3), and is accrued at a rate equal to or
5 greater than the rate described in this section.

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

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

19 e. If an employee is transferred to a separate division, entity, or
20 location, but remains employed by the same employer, then the
21 employee shall be entitled to all earned sick leave accrued at the
22 prior division, entity, or location, and shall be entitled to use the
23 accrued earned sick leave as provided in **【this act】** P.L.2018, c.10
24 (C.34:11D-1 et seq.). If an employee is terminated, laid off,
25 furloughed, or otherwise separated from employment with the
26 employer, any unused accrued earned sick leave shall be reinstated
27 upon the re-hiring or reinstatement of the employee to that
28 employment, within six months of termination, being laid off or
29 furloughed, or separation, and prior employment with the employer
30 shall be counted towards meeting the eligibility requirements set
31 forth in this section. When a different employer succeeds or takes
32 the place of an existing employer, all employees of the original
33 employer who remain employed by the successor employer are
34 entitled to all of the earned sick leave they accrued when employed
35 by the original employer, and are entitled to use the earned sick
36 leave previously accrued immediately.

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

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

44
45 3. This act shall take effect immediately.