

[First Reprint]

**SENATE, No. 3827**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED JUNE 1, 2021

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**SYNOPSIS**

Provides temporary paid earned sick leave to workers during coronavirus disease 2019 pandemic.

**CURRENT VERSION OF TEXT**

As reported by the Senate Labor Committee on June 10, 2021, with amendments.



1 AN ACT concerning earned sick leave and amending and  
2 supplementing 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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLA committee amendments adopted June 10, 2021.

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

3 **["Employee"]** With the exception of section 6 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill),  
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. For  
10 purposes of section 6 of P.L. , c. (C. ) (pending before the  
11 Legislature as this bill), "employee" does not include a State  
12 employee in the career, unclassified, or senior executive service  
13 who is subject on the effective date of P.L. , c. (C. )  
14 (pending before the Legislature as this bill), to COVID-19 Sick  
15 Leave pursuant to N.J.A.C.4A:6-1.3A.

16 "Employer" means any person, firm, business, educational  
17 institution, nonprofit agency, corporation, limited liability company  
18 or other entity that employs employees in the State, including a  
19 temporary help service firm. In the case of a temporary help service  
20 firm placing an employee with client firms, earned sick leave shall  
21 accrue on the basis of the total time worked on assignment with the  
22 temporary help service firm, not separately for each client firm to  
23 which the employee is assigned. **["Employer"]** With the exception  
24 of section 6 of P.L. , c. (C. )(pending before the Legislature  
25 as this bill), "employer" does not include a public employer that is  
26 required to provide its employees with sick leave with full pay  
27 pursuant to any other law, rule or regulation of this State.

28 "Family member" means a child, grandchild, sibling, spouse,  
29 domestic partner, civil union partner, parent, or grandparent of an  
30 employee, or a spouse, domestic partner, or civil union partner of a  
31 parent or grandparent of the employee, or a sibling of a spouse,  
32 domestic partner, or civil union partner of the employee, or any  
33 other individual related by blood to the employee or whose close  
34 association with the employee is the equivalent of a family  
35 relationship.

36 "Health care professional" means any person licensed under  
37 federal, State, or local law, or the laws of a foreign nation, to  
38 provide health care services, or any other person who has been  
39 authorized to provide health care by a licensed health care  
40 professional, including but not limited to doctors, nurses and  
41 emergency room personnel.

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

1 "Per diem health care employee" means any:

2 (1) health care professional licensed in the State of New Jersey  
3 employed by a health care facility licensed by the New Jersey  
4 Department of Health;

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

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

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

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

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

20 (3) either:

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

25 (b) has waived earned sick leave benefits as provided under this  
26 act under terms of employment for alternative benefits or  
27 consideration.

28 "Per diem health care employee" shall not include any individual  
29 who is certified as a homemaker-home health aide.

30 "Retaliatory personnel action" means denial of any right  
31 guaranteed under this act and any threat, discharge, including a  
32 constructive discharge, suspension, demotion, unfavorable  
33 reassignment, refusal to promote, disciplinary action, sanction,  
34 reduction of work hours, reporting or threatening to report the  
35 actual or suspected immigrant status of an employee or the  
36 employee's family, or any other adverse action against an employee.

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

39 "Spouse" means a husband or wife.

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

41

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

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

1 under this section, on the first day of each benefit year in  
2 accordance with subsection c. or subsection d. of section 3 of this  
3 act. **【The】** Except as provided by section 6 of P.L. , c. (C. )  
4 (pending before the Legislature as this bill), the employer shall not  
5 be required to permit the employee to accrue or use in any benefit  
6 year, or carry forward from one benefit year to the next, more than  
7 40 hours of earned sick leave. **【Unless】** Except as provided by  
8 section 6 of P.L. , c. (C. ) (pending before the Legislature  
9 as this bill), unless the employee has accrued earned sick leave prior  
10 to the effective date of **【this act】** P.L.2018, c.10 (C.34:11D-  
11 1 et seq.), the earned sick leave pursuant to this section shall begin  
12 to accrue on the effective date of **【this act】** P.L.2018, c.10  
13 (C.34:11D-1 et seq.) for any employee who is hired and commences  
14 employment before the effective date of this act and the employee  
15 shall be eligible to use the earned sick leave beginning on the 120th  
16 calendar day after the employee commences employment, and if the  
17 employment commences after the effective date of this act, the  
18 earned sick leave shall begin to accrue upon the date that  
19 employment commences and the employee shall be eligible to use  
20 the earned sick leave beginning on the 120th calendar day after the  
21 employee commences employment, unless the employer agrees to  
22 an earlier date. The employee may subsequently use earned sick  
23 leave as soon as it is accrued.

24 b. An employer shall be in compliance with this section if the  
25 employer offers paid time off, which is fully paid and shall include,  
26 but is not limited to personal days, vacation days, and sick days,  
27 and may be used for the purposes of section 3 of this act in the  
28 manner provided by this act, and is accrued at a rate equal to or  
29 greater than the rate described in this section.

30 c. **【The】** Except as provided by section 6 of  
31 P.L. , c. (C. ) (pending before the Legislature as this bill),  
32 the employer shall pay the employee for earned sick leave at the  
33 same rate of pay with the same benefits as the employee normally  
34 earns, except that the pay rate shall not be less than the minimum  
35 wage required for the employee pursuant to section 5 of P.L.1966,  
36 c.113 (C.34:11-56a4).

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

45 e. If an employee is transferred to a separate division, entity, or  
46 location, but remains employed by the same employer, then the  
47 employee shall be entitled to all earned sick leave accrued at the

1 prior division, entity, or location, and shall be entitled to use the  
2 accrued earned sick leave as provided in this act. If an employee is  
3 terminated, laid off, furloughed, or otherwise separated from  
4 employment with the employer, any unused accrued earned sick  
5 leave shall be reinstated upon the re-hiring or reinstatement of the  
6 employee to that employment, within six months of termination,  
7 being laid off or furloughed, or separation, and prior employment  
8 with the employer shall be counted towards meeting the eligibility  
9 requirements set forth in this section. When a different employer  
10 succeeds or takes the place of an existing employer, all employees  
11 of the original employer who remain employed by the successor  
12 employer are entitled to all of the earned sick leave they accrued  
13 when employed by the original employer, and are entitled to use the  
14 earned sick leave previously accrued immediately.

15 f. **【An】** Except as provided by section 6 of  
16 P.L. , c. (C. ) (pending before the Legislature as this bill),  
17 an employer may choose the increments in which its employees  
18 may use earned sick leave, provided that the largest increment of  
19 earned sick leave that an employee may be required to use for each  
20 shift for which earned sick leave is used shall be the number of  
21 hours the employee was scheduled to work during that shift.  
22 (cf: P.L.2018, c.10, s.2)

23

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

26 3. a. An employer shall permit an employee to use the earned  
27 sick leave accrued pursuant to **【this act】** section 2 of P.L.2018, c.10  
28 (C.34:11D-2) for any of the following:

29 (1) time needed for diagnosis, care, or treatment of, or recovery  
30 from, an employee's mental or physical illness, injury or other  
31 adverse health condition, or for preventive medical care for the  
32 employee;

33 (2) time needed for the employee to aid or care for a family  
34 member of the employee during diagnosis, care, or treatment of, or  
35 recovery from, the family member's mental or physical illness,  
36 injury or other adverse health condition, or during preventive  
37 medical care for the family member;

38 (3) absence necessary due to circumstances resulting from the  
39 employee, or a family member of the employee, being a victim of  
40 domestic or sexual violence, if the leave is to allow the employee to  
41 obtain for the employee or the family member: medical attention  
42 needed to recover from physical or psychological injury or  
43 disability caused by domestic or sexual violence; services from a  
44 designated domestic violence agency or other victim services  
45 organization; psychological or other counseling; relocation; or legal  
46 services, including obtaining a restraining order or preparing for, or

1 participating in, any civil or criminal legal proceeding related to the  
2 domestic or sexual violence;

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

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

9 (b) the declaration of a state of emergency by the Governor, or  
10 the issuance by a health care provider or the Commissioner of  
11 Health or other public health authority of a determination that the  
12 presence in the community of the employee, or a member of the  
13 employee's family in need of care by the employee, would  
14 jeopardize the health of others;

15 (c) during a state of emergency declared by the Governor, or  
16 upon the recommendation, direction, or order of a healthcare  
17 provider or the Commissioner of Health or other authorized public  
18 official, the employee undergoes isolation or quarantine, or cares  
19 for a family member in quarantine, as a result of suspected exposure  
20 to a communicable disease and a finding by the provider or  
21 authority that the presence in the community of the employee or  
22 family member would jeopardize the health of others; or

23 (5) time needed by the employee in connection with a child of  
24 the employee to attend a school-related conference, meeting,  
25 function or other event requested or required by a school  
26 administrator, teacher, or other professional staff member  
27 responsible for the child's education, or to attend a meeting  
28 regarding care provided to the child in connection with the child's  
29 health conditions or disability.

30 b. If an employee's need to use earned sick leave is foreseeable,  
31 an employer may require advance notice, not to exceed seven  
32 calendar days prior to the date the leave is to begin, of the intention  
33 to use the leave and its expected duration, and shall make a  
34 reasonable effort to schedule the use of earned sick leave in a  
35 manner that does not unduly disrupt the operations of the employer.  
36 If the reason for the leave is not foreseeable, an employer may  
37 require an employee to give notice of the intention as soon as  
38 practicable, if the employer has notified the employee of this  
39 requirement. **【Employers】** Except as provided by section 6 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill),  
41 employers may prohibit employees from using foreseeable earned  
42 sick leave on certain dates, and require reasonable documentation if  
43 sick leave that is not foreseeable is used during those dates. For  
44 earned sick leave of three or more consecutive days, an employer  
45 may require reasonable documentation that the leave is being taken  
46 for the purpose permitted under subsection a. of this section, except  
47 as provided in subsection j. of section 6 of P.L. , c. (C. )  
48 (pending before the Legislature as this bill). If the leave is permitted

1 under paragraph (1) or (2) of subsection a. of this section,  
2 documentation signed by a health care professional who is treating  
3 the employee or the family member of the employee indicating the  
4 need for the leave and, if possible, number of days of leave, shall be  
5 considered reasonable documentation. If the leave is permitted  
6 under paragraph (3) of subsection a. of this section because of  
7 domestic or sexual violence, any of the following shall be  
8 considered reasonable documentation of the domestic or sexual  
9 violence: medical documentation; a law enforcement agency record  
10 or report; a court order; documentation that the perpetrator of the  
11 domestic or sexual violence has been convicted of a domestic or  
12 sexual violence offense; certification from a certified Domestic  
13 Violence Specialist or a representative of a designated domestic  
14 violence agency or other victim services organization; or other  
15 documentation or certification provided by a social worker,  
16 counselor, member of the clergy, shelter worker, health care  
17 professional, attorney, or other professional who has assisted the  
18 employee or family member in dealing with the domestic or sexual  
19 violence. If the leave is permitted under paragraph (4) of  
20 subsection a. of this section, a copy of the order of the public  
21 official or the determination by the health authority shall be  
22 considered reasonable documentation.

23 c. Nothing in this act shall be deemed to require an employer to  
24 provide earned sick leave for an employee's leave for purposes  
25 other than those identified in this section or section 6 of P.L. \_\_, c. (C. \_\_)  
26 (pending before the Legislature as this bill), or  
27 prohibit the employer from taking disciplinary action against an  
28 employee who uses earned sick leave for purposes other than those  
29 identified in this section or section 6 of P.L. \_\_, c. (C. \_\_)  
30 (pending before the Legislature as this bill). An employer may  
31 provide an offer to an employee for a payment of unused earned  
32 sick leave pursuant to section 2 of P.L.2018, c.10 (C.34:11D-2) in  
33 the final month of the employer's benefit year. The employee shall  
34 choose, no later than 10 calendar days from the date of the  
35 employer's offer, whether to accept a payment or decline a payment.  
36 If the employee agrees to receive a payment, the employee shall  
37 choose a payment for the full amount of unused earned sick leave or  
38 for 50 percent of the amount of unused earned sick leave. The  
39 payment amount shall be based on the same rate of pay that the  
40 employee earns at the time of the payment. If the employee  
41 declines a payment for unused earned sick leave, or agrees to a  
42 payment for 50 percent of the amount of unused sick leave, the  
43 employee shall be entitled to carry forward any unused or unpaid  
44 earned sick leave to the proceeding benefit year as provided  
45 pursuant to subsection a. of section 2 of this act. If the employee  
46 agrees to a payment for the full amount of unused earned sick leave,  
47 the employee shall not be entitled to carry forward any earned sick

1 leave to the proceeding benefit year pursuant to subsection a. of  
2 section 2 of this act.

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

20 e. Any information an employer possesses regarding the health  
21 of an employee or any family member of the employee or domestic  
22 or sexual violence affecting an employee or employee's family  
23 member shall be treated as confidential and not disclosed except to  
24 the affected employee or with the written permission of the affected  
25 employee.

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

27

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

30 7. a. Employers shall provide **【notification】** notifications, in a  
31 form issued by the commissioner, to employees of their rights under  
32 this act, including the amount of earned sick leave to which they are  
33 entitled and the terms of its use, the availability of additional earned  
34 sick leave for purposes related to the coronavirus disease 2019  
35 pandemic and the terms of its use pursuant to section 6 of P.L. ,  
36 c. (C. ) (pending before the Legislature as this bill), and  
37 remedies provided by this act to employees if an employer fails to  
38 provide the required benefits or retaliates against employees  
39 exercising their rights under this act. Each covered employer shall  
40 conspicuously post the **【notification】** notifications in a place or  
41 places accessible to all employees in each of the employer's  
42 workplaces. The employer shall also provide each employee  
43 employed by the employer with a written copy of the notification:  
44 not later than 30 days after the form of the notification is issued,  
45 including issuance of the form of notification regarding rights  
46 provided by section 6 of P.L. , c. (C. ) (pending before the  
47 Legislature as this bill); at the time of the employee's hiring, if the

1 employee is hired after the issuance; and at any time, when first  
2 requested by the employee. The commissioner shall make the  
3 notifications available in English, in Spanish, and any other  
4 language that the commissioner determines is the first language of a  
5 significant number of workers in the State and the employer shall  
6 use the notification in English, Spanish or any other language for  
7 which the commissioner has provided notifications and which is the  
8 first language of a majority of the employer's workforce.

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

14 (cf: P.L.2018, c.10, s.7)

15  
16 5. Section 8 of P.L.2018, c.10 (C.34:11D-8) is amended to read  
17 as follows:

18 8. a. The governing body of a county or municipality shall not,  
19 after the effective date of this act, adopt any ordinance, resolution,  
20 law, rule, or regulation regarding earned sick leave. The provisions  
21 of this act shall preempt any ordinance, resolution, law, rule, or  
22 regulation regarding earned sick leave adopted by the governing  
23 body of a county or municipality.

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

26 (1) requiring an employer to reduce, or justifying an employer  
27 in reducing, rights or benefits provided by the employer pursuant to  
28 an employer policy or collective bargaining agreement which are  
29 more favorable to employees than those required by this act or  
30 which provide rights or benefits to employees not covered by this  
31 act;

32 (2) preventing or prohibiting the employer from agreeing,  
33 through a collective bargaining agreement or employer policy, to  
34 provide rights or benefits which are more favorable to employees  
35 than those required by this act or to provide rights or benefits to  
36 employees not covered by this act;

37 (3) prohibiting an employer from establishing a policy whereby  
38 an employee may donate unused accrued earned sick leave to  
39 another employee or other employees; or

40 (4) superseding any law providing collective bargaining rights  
41 for employees, or in any way reducing, diminishing, or adversely  
42 affecting those collective bargaining rights, or in any way reducing,  
43 diminishing, or affecting the obligations of employers under those  
44 laws.

45 **【Employees】** Except for earned sick leave related to the  
46 coronavirus disease 2019 pandemic provided by section 6 of  
47 P.L. , c. (C. ) (pending before the Legislature as this bill),  
48 employees or employee representatives may waive the rights or

1 benefits provided under this act during the negotiation of a  
2 collective bargaining agreement.

3 c. With respect to employees covered by a collective  
4 bargaining agreement in effect at the time of the effective date of  
5 **【this act】** P.L.2018, c.10 (C.34:11D-1 et seq.), no provision of  
6 **【this act】** P.L.2018, c.10 (C.34:11D-1 et seq.) related to accrued  
7 earned sick leave shall apply until the stated expiration of the  
8 collective bargaining agreement. This subsection shall not apply to  
9 the provisions of section 6 of P.L. , c. (C. ) (pending before  
10 the Legislature as this bill)  
11 (cf: P.L.2018, c.10, s.8)

12  
13 6. (New section) a. On the effective date of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill) or  
15 upon commencement of employment, whichever is later, an  
16 employer shall provide each employee of an employer with earned  
17 sick leave related to the coronavirus disease 2019 pandemic as  
18 described in subsection e. of this section, in addition to earned sick  
19 leave accrued pursuant to section 2 of P.L.2018, c.10 (C.34:11D-2),  
20 in the following amount:

21 (1) For employees who normally work 40 or more hours in a  
22 week, 80 hours;

23 (2) For employees who normally work fewer than 40 hours in a  
24 week, a number of hours equal to the number of hours that such  
25 employee works, on average, over a two-week period.

26 b. In the case of an employee described in paragraph (2) of  
27 subsection a. whose schedule varies from week to week to such an  
28 extent that an employer is unable to determine with certainty the  
29 number of hours the employee would have worked if that employee  
30 had not taken earned sick leave under subsection a. of this section,  
31 the employer shall use the following in place of that number:

32 (1) Subject to paragraph (2) of this subsection b., a number  
33 equal to the average number of hours that the employee was  
34 scheduled per day over the six month period ending on the date on  
35 which the employee takes the earned sick leave, including hours for  
36 which the employee took leave of any type; or

37 (2) If the employee did not work over the period described in  
38 paragraph (1) of this subsection, the reasonable expectation of the  
39 employee at the time of hiring of the average number of hours per  
40 day that the employee would normally be scheduled to work.

41 c. Notwithstanding any other provision of P.L.2018, c.10  
42 (C.34:11D-1 et seq.), the earned sick leave under subsection a. of  
43 this section shall be available for immediate use by the employee  
44 for the purposes described in subsection e. of this section,  
45 regardless of how long the employee has been employed by an  
46 employer. Notwithstanding any other provision of P.L.2018, c.10  
47 (C.34:11D-1 et seq.), an employee shall be entitled to carry forward

1 any unused earned sick leave provided pursuant to  
2 P.L. , c. (C. ) (pending before the Legislature as this bill) to  
3 a succeeding benefit year while P.L. , c. (C. ) (pending  
4 before the Legislature as this bill) remains in effect.

5 d. An employee may elect to use earned sick leave under  
6 section 3 of P.L.2018, c.10 (C.34:11D-3) or any other leave  
7 provided by the employer that is available for the purposes  
8 described in subsection e. of this section prior to the use of earned  
9 sick leave provided by this section. However, an employer shall not  
10 require an employee to use earned sick leave provided by section 3  
11 of P.L.2018, c.10 (C.34:11D-3) or other leave provided by the  
12 employer to the employee concurrently or before the employee uses  
13 the earned sick leave under subsection a. of this section, unless  
14 federal law requires otherwise.

15 e. The earned sick leave required in subsection a. of this  
16 section shall be provided by an employer to each employee  
17 employed by the employer to the extent that the employee is unable  
18 to work, either onsite or remotely, due to a need for leave because:

19 (1) The employee is subject to a federal, State, or local  
20 quarantine or isolation order related to coronavirus disease 2019;

21 (2) The employee has been advised by a healthcare provider to  
22 self-quarantine due to concerns related to coronavirus disease 2019;

23 (3) The employee is experiencing symptoms of coronavirus  
24 disease 2019 and seeking a medical diagnosis, the employee is  
25 seeking or awaiting the results of a diagnostic test for, or a medical  
26 diagnosis of, coronavirus disease 2019 and the employee has been  
27 exposed to coronavirus disease 2019 or the employee's employer  
28 has requested that test or diagnosis, or the employee is obtaining  
29 immunization related to coronavirus disease 2019 or recovering  
30 from any injury, disability, illness, or condition related to that  
31 immunization;

32 (4) The employee is caring for an individual who is subject to an  
33 order as described in paragraph (1) or has been advised as described  
34 in paragraph (2);

35 (5) The employee is caring for a child or family member of the  
36 employee if the school or place of care of the child or family  
37 member has been closed, or the care provider of the child or family  
38 member is unavailable, due to coronavirus disease 2019  
39 precautions; or

40 (6) The employee is experiencing any other substantially similar  
41 condition specified by the United States Secretary of Health and  
42 Human Services in consultation with the United States Secretary of  
43 the Treasury and the United States Secretary of Labor.

44 f. For earned sick leave used pursuant to paragraphs (1), (2), or  
45 (3) of subsection e. of this section, an employer shall pay the  
46 employee based on the same rate of pay with the same benefits as  
47 the employee normally earns, or the minimum wage required for the  
48 employee pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4)

1 with the same benefits as the employee normally earns, whichever  
2 is higher, except that in no event shall an employer be required to  
3 pay the employee more than \$511 per day and \$5,110 in the  
4 aggregate.

5 g. For earned sick leave used pursuant to paragraphs (4), (5), or  
6 (6) of subsection e. of this section, an employer shall pay the  
7 employee based on two-thirds of the same rate of pay as the  
8 employee normally earns, in addition to the same benefits the  
9 employee normally earns; or the minimum wage required for the  
10 employee pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4)  
11 in addition to the same benefits that the employee normally earns,  
12 whichever is higher. Notwithstanding the provisions of this  
13 subsection g., in no event shall an employer be required to pay the  
14 employee more than \$200 per day and \$2,000 in the aggregate for  
15 earned sick leave used pursuant to paragraphs (4), (5), or (6) of  
16 subsection e. of this section.

17 h. The earned sick leave requirements pursuant to this section  
18 shall apply retroactively to January 1, 2021 as follows:

19 (1) For leave taken for any purpose described in subsection e. of  
20 this section after January 1, 2021 but prior to the date of enactment  
21 of this section, if the employer did not compensate the employee in  
22 an amount equal to or greater than the amount of compensation for  
23 earned sick leave to which the employee is entitled as set forth  
24 under subsections f. or g. of this section, then the employer shall  
25 provide the employee with a retroactive payment that provides for  
26 that compensation; and

27 (2) For any retroactive payment provided for in this subsection  
28 h., the number of hours of leave corresponding to the amount of the  
29 retroactive payment shall count towards the total number of hours  
30 of earned sick leave that the employer is required to provide to the  
31 employee under subsections a. and b. of this section.

32 i. Notwithstanding any other provision in P.L.2018 c.10  
33 (C.34:11D-1 et seq.), the employee shall provide notice to the  
34 employer of the need for earned sick leave pursuant to this section  
35 as soon as practicable to the extent that the earned sick leave is  
36 foreseeable, except that the notice is not required if the employer's  
37 place of business is closed.

38 j. Notwithstanding any other provision in P.L.2018, c.10  
39 (C.34:11D-1 et seq.), **1**documentation shall not be required for  
40 earned sick leave under this section **1** if an employee uses three or  
41 more consecutive days of earned sick leave pursuant to this section,  
42 the employer may require a signed statement from an employee that  
43 provides: the employee's name; the date or dates for which leave is  
44 requested and taken; a statement of the COVID-19 related reason  
45 the employee is requesting leave pursuant to subsection e. of this  
46 section; and a statement that the employee is unable to work,  
47 including by means of telework. If the leave request is based on a

1 quarantine order or self-quarantine advice, the statement shall also  
2 include: the name of the governmental entity ordering quarantine or  
3 the name of the health care provider advising self-quarantine. If the  
4 person subject to quarantine or advised to self-quarantine is not the  
5 employee, the signed statement shall include that person's name and  
6 relation to the employee. In the case of a leave request pursuant to  
7 paragraph (5) of subsection e. of this section, the statement from the  
8 employee shall include the name of t the school, place of care, or  
9 care provider that has closed or become unavailable. The statement  
10 may be written in the employee's first language and need not be  
11 notarized or in any particular format<sup>1</sup>.

12 k. Notwithstanding subsection f. of section 2 of (C.34:11D-2),  
13 earned sick leave under this section may be used in the lower of  
14 hourly increments or the lowest increment that the employer's  
15 payroll system uses to account for absences or use of other time.

16 l. Notwithstanding any other provision to the contrary, an  
17 employer may choose to compensate workers at a higher rate of pay  
18 for all or part of their hours, provide a greater amount of leave, and  
19 provide rights or benefits which are more favorable to employees  
20 than required under this section.

21 m. An employee shall be entitled to use earned sick leave under  
22 this section until September 30, 2021 or until the last date for which  
23 use of emergency paid sick leave could qualify for the payroll credit  
24 for emergency paid sick leave pursuant to section 3131 of the  
25 Internal Revenue Code (26 U.S.C. s.3131), whichever is later.

26

27 7. This act shall take effect immediately, and its provisions  
28 shall be retroactive to January 1, 2021.