

SENATE, No. 799

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Co-Sponsored by:

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

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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-16).

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.

11 "Health care professional" means any person licensed under
12 federal, State, or local law, or the laws of a foreign nation, to
13 provide health care services, or any other person who has been
14 authorized to provide health care by a licensed health care
15 professional, including but not limited to doctors, nurses and
16 emergency room personnel.

17 "Parent" means a biological, adoptive, or foster parent,
18 stepparent, or legal guardian of an employee or of the employee's
19 spouse, domestic partner, or civil union partner, or a person who
20 stood in loco parentis of the employee or the employee's spouse,
21 domestic partner, or civil union partner when the employee, spouse
22 or partner was a minor child.

23 "Retaliatory personnel action" means denial of any right
24 guaranteed under this act and any threat, constructive discharge,
25 suspension, demotion, unfavorable reassignment, refusal to
26 promote, disciplinary action, sanction, or any other adverse action
27 against an employee.

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

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

40 "Spouse" means a husband or wife.

41

42 2. a. Each employer shall provide earned sick leave to each
43 employee working for the employer in the State. For every 30 hours
44 worked, the employee shall accrue one hour of earned sick leave,
45 except that an employer may provide an employee with the full
46 complement of earned sick leave for a benefit year, as required
47 under this section, on the first day of each benefit year in
48 accordance with subsection c. or subsection d. of section 3 of this

1 act. The employer shall not be required to permit the employee to
2 accrue at any one time, or carry forward from one benefit year to
3 the next, more than 40 hours of earned sick leave if the employer is
4 a small employer, or more than 72 hours of earned sick leave if the
5 employer is not a small employer. Unless the employee has accrued
6 earned sick leave prior to the effective date of this act, the earned
7 sick leave shall begin to accrue on the effective date of this act for
8 any employee hired before the effective date of this act and the
9 employee shall be eligible to use the earned sick leave beginning on
10 the 100th calendar day after the hiring of the employee, and if hired
11 after the effective date of this act, the earned sick leave shall begin
12 to accrue upon the date of hire and the employee shall be eligible to
13 use the earned sick leave beginning on the 100th calendar day after
14 the hiring of the employee, unless the employer agrees to an earlier
15 date. The employee may use earned sick leave as it is accrued.

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

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

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

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

46
47 3. a. An employer shall permit an employee to use the earned
48 sick leave accrued pursuant to this act for any of the following:

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

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

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

39 d. If an employer foregoes the accrual process for earned sick
40 leave hours pursuant to subsection a. of section 2 of this act and
41 provides an employee with the full complement of earned sick leave
42 for a benefit year on the first day of each benefit year, then the
43 employer shall either provide to the employee a payment for the full
44 amount of unused earned sick leave in the final month of the
45 employer's benefit year or carry forward any unused sick leave to
46 the next benefit year. The employer may pay the employee the full
47 amount of unused earned sick leave in the final month of a benefit
48 year pursuant to this subsection d. only if the employer forgoes,

1 with respect to that employee, the accrual process for earned sick
2 leave during the next benefit year. Unless an employer policy or
3 collective bargaining agreement provides for the payment of
4 accrued earned sick leave upon termination, resignation, retirement
5 or other separation from employment, an employee shall not be
6 entitled under this section to payment of unused earned sick leave
7 upon the separation from employment.

8 e. Any information an employer possesses regarding the health
9 of an employee or any family member of the employee or domestic
10 or sexual violence affecting an employee or employee's family
11 member shall be treated as confidential and not disclosed except to
12 the affected employee or with the written permission of the affected
13 employee.

14
15 4. a. No employer shall take retaliatory personnel action or
16 discriminate against an employee because the employee requests or
17 uses earned sick leave either in accordance with this act or the
18 employer's own earned sick leave policy, as the case may be, or
19 files a complaint with the commissioner alleging the employer's
20 violation of any provision of this act, or informs any other person of
21 their rights under this act. No employer shall count earned sick
22 leave taken under this act as an absence that may result in the
23 employee being subject to discipline, discharge, demotion,
24 suspension, a loss or reduction of pay, or any other adverse action.

25 b. There shall be a rebuttable presumption of an unlawful
26 retaliatory personnel action under this section whenever an
27 employer takes adverse action against an employee within 90 days
28 of when that employee: files a complaint with the department or a
29 court alleging a violation of any provision of this section; informs
30 any person about an employer's alleged violation of this section;
31 cooperates with the department or other persons in the investigation
32 or prosecution of any alleged violation of this section; opposes any
33 policy, practice, or act that is unlawful under this section; or
34 informs any person of his or her rights under this section.

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

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

42
43 5. Any failure of an employer to make available or pay earned
44 sick leave as required by this act, or any other violation of this act,
45 shall be regarded as a failure to meet the wage payment
46 requirements of the "New Jersey State Wage and Hour Law,"
47 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
48 as the case may be, and all remedies, penalties or other measures

1 provided by that act for failure to pay wages or other violations of
2 that act shall be applicable, including, but not limited to, penalties
3 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22
4 and 34:11-56a24), and civil actions by employees pursuant to
5 section 26 of that act (C.34:11-56a25), except that an award to an
6 employee in a civil act shall include, in addition to the amount
7 provided pursuant to section 26 of that act (C.34:11-56a25), any
8 actual damages suffered by the employee as the result of the
9 violation plus an equal amount of liquidated damages.

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

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

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

6
7 8. a. The governing body of a county or municipality shall not,
8 after the effective date of this act, adopt any ordinance, resolution,
9 law, rule, or regulation regarding earned sick leave. The provisions
10 of this act shall preempt any ordinance, resolution, law, rule, or
11 regulation regarding earned sick leave unless adopted by the
12 governing body of a county or municipality prior to the effective
13 date of this act. This act shall not be construed to preempt, limit, or
14 otherwise affect the applicability of any provision of an ordinance,
15 resolution, law, rule, or regulation regarding earned sick leave
16 adopted by a county or municipality prior to the effective date of
17 this act that provides rights or benefits to employees which are
18 more favorable to employees than those required by this act or that
19 provides rights or benefits to employees not covered by this act, but
20 shall preempt any provision which is less favorable to employees
21 than is required by this act.

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

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

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

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

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

43 c. With respect to employees covered by a collective
44 bargaining agreement in effect at the time of the effective date of
45 this act, no provision of this act shall apply until the expiration of
46 the collective bargaining agreement.

47 d. A public employer shall not be subject of the provisions of
48 this act with respect to its employees if the employer is subject to

1 the provisions of any State statute or regulation regarding earned
2 sick leave which are more favorable to those employees than the
3 provisions of this act.
4

5 9. The commissioner shall adopt rules and regulations pursuant
6 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
7 1 et seq.) to effectuate the purposes of this act.
8

9 10. This act shall take effect on the 120th day following
10 enactment.
11

12
13 STATEMENT
14

15 This bill requires each employer to provide earned sick leave to
16 each employee it employs in the State. The employee accrues one
17 hour of earned sick leave for every 30 hours worked. The employer is
18 not required to permit the employee to accrue at any one time, or carry
19 forward from one year to the next, more than 40 hours of earned sick
20 leave if the employer has less than 10 employees in the State, or more
21 than 72 hours of earned sick leave if the employer has 10 or more
22 employees. Unless the employee accrued earned sick leave with the
23 employer before the effective date of the bill, the leave accrues
24 beginning on that date or on the 100th day after the employee is hired,
25 unless the employer agrees to an earlier date.

26 The employer is required to pay the employee for earned sick leave
27 at the same rate of pay with the same benefits as the employee
28 normally earns, except that the pay rate may not be less than the State
29 minimum wage. Earned sick leave may be used for:

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

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

37 3. Absence needed due to circumstances resulting from the
38 employee or a family member being a victim of domestic or sexual
39 violence, if the leave is to obtain medical attention, counseling,
40 relocation, legal or other services.

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