

Sick Leave Legislation

October 25, 2018 | by Andrew Berns

On May 2, 2018, Gov. Murphy signed into law the New Jersey Paid Sick Leave Act, which will take effect on October 29, 2018. The ramifications are sweeping and are sure to have a substantial impact on the healthcare community. All healthcare facilities (assisted living, skilled nursing, independent living) must act now to make sure that their sick leave policies comply with the law or face dire consequences.

Who Does this Apply to?

The Act is particularly significant because of the breadth of its applicability to employers and employees in New Jersey.

As to employers, the Act requires that generally all private and public employers comply with these new rules, with exceptions to per diem healthcare workers, certain employees covered by collective bargaining agreements, and certain public employees already provided with sick leave through other law or regulation. The Act applies its terms equally to all employers, even small businesses.

As to employees, the Act is also particularly expansive because a minimum amount of hours worked is not required for an employee to be eligible for paid sick leave, so long as the employer is required to comply.

What Does the Law Require?

Employers are required to provide up to 40 hours of paid sick leave to employees during an employer-established benefit year. Up to 40 hours of paid sick leave are to accrue at a rate of 1 benefit hour for every 30 hours worked by the employee.

As an alternative, a business may provide 40 hours of front loaded paid sick time, or provide an alternative leave policy that provides equal or greater benefits than the statutory minimums, so long as the policy also allows these benefits to accrue at an equal or greater rate to the statutory minimums.

Employees can be eligible to use sick leave for a broad range of reasons including:

1. Diagnosis, treatment, care, or recovery from the employee's own mental or physical illness, injury, or other condition, including preventative care;
2. To aid or care for a family member during diagnosis, care, treatment, recovery from a mental or physical illness, injury, or other condition, including preventative care;
3. Circumstances relating to domestic or sexual violence concerning an employee or the employee's family member;
4. Circumstances relating to closure of the employee's workplace, or the school or childcare used by the employee, by order of a public official due to a public health emergency;
5. Time needed by the employee in connection with attending a school-related conference, meeting, function or other event requested or required by the school, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

Up to 40 hours of unused time can be carried forward to the next year for employers with less than 10 employees, and up to 72 hours if the employer has 10 or more employees.

Employers should implement sick leave policies to reflect the new rules, including necessary procedures for recording accrual and use of sick time. If policies already are in place, employers should review their existing leave policies in order to determine if changes need to be made to meet the minimum requirements of the new rules. In particular, many policies will need to be amended to include provisions allowing for use of sick leave for school related reasons, and domestic violence related reasons, which were not commonly included provisions in many sick leave policies.

All employers must post a conspicuous notice of the employee's rights under the Act.

What are the Penalties for Noncompliance?

The Act expressly provides for penalties for violations, allowing employees to bring a civil action for noncompliance, seeking the monetary value of the unpaid leave, plus costs and attorneys' fees. The Act also contains a rebuttable presumption of retaliatory action when an employer takes an adverse action against an employee within 90 days after the employee files a complaint with the Court or the Department of Labor, informs any person that the employer violated the law, cooperates in the investigation or prosecution of an alleged violation of the act, opposes any policy, practice or act under the law, or informs any person of his or her rights under the Act.

All employers in the State of New Jersey, particularly healthcare providers, must carefully review current PTO/sick time policies to ensure compliance. Failure to review and be in strict compliance will certainly result in increased Department of Labor audits and litigation.