

NOVEMBER 9, 2015

## Changes to Paid Sick Time in New Jersey: Elizabeth Becomes 10th Municipality to Require Paid Sick Leave and Jersey City Expands its Paid Sick Leave Ordinance

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On October 29, 2015, the City Council in Jersey City, New Jersey voted to broaden the scope of its paid sick leave ordinance, which was enacted in 2013. Just five days later, on November 3, 2015, voters in Elizabeth, New Jersey approved a paid sick leave law, becoming the 10th municipality in New Jersey to require private employers to provide paid sick time to their employees.<sup>1</sup>

### Elizabeth's Paid Sick Time Ordinance

Elizabeth's law takes effect on March 2, 2016. The law largely follows the language of the paid sick leave ordinances in the nine other New Jersey municipalities with paid sick leave laws.

### **Covered Employers & Employees**

The ordinance applies to all private employers regardless of size, although the amount of paid sick leave time provided to employees varies based upon the total number of employees. An employee is eligible for paid sick leave if he or she works at least 80 hours in a calendar year. Employees who are covered by a collective bargaining agreement are permitted to waive the requirements of paid sick leave laws in their collective bargaining agreement.

### **Accrual, Advances, Caps, and Carry-Over**

Employees accrue one hour of paid sick leave for every 30 hours worked. For employers with 10 or more employees, total paid sick time is capped at 40 hours per year. For employers with 10 or fewer employees, paid sick time is capped at 24 hours per year. Employers of child care workers, home health workers, and food service workers are required to provide 40 hours per year – regardless of their total number of employees. Exempt employees are assumed to work 40 hours per week for purposes of accrual under the ordinances. Employees may not start to use their accrued sick time until their 90th day of employment.

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<sup>1</sup> The other municipalities, besides Jersey City, are Newark, East Orange, Patterson, Passaic, Trenton, Montclair, Irvington, and Bloomfield.

Employees may carry over up to 40 hours of unused, accrued sick time to the following year. However, even if time is carried over from the previous year, employers are not required to allow employees to use more than 40 hours of paid sick time in a single calendar year. Moreover, if the employer pays the employees for accrued, unused sick time at the end of the year, then it is not required to carry the time over. Payment of accrued, unused sick days is not required upon termination of employment.

Employers with a paid leave policy (a “Paid Time Off” or “PTO” policy) may continue to use such a policy in lieu of a specific paid sick leave policy *provided* the paid leave granted pursuant to the policy is sufficient to meet the total annual accrual requirement set forth in the ordinances. Employees must be able to use leave under such a policy for the same purposes and under the same conditions as allowed under the paid sick leave law.

## Permitted Uses

Employees can use sick time for the medical diagnosis, care or treatment of their own or their family member’s mental or physical illness, injury, or health condition.<sup>2</sup> Paid sick leave can also be used when an employee’s place of business or the school or day care of an employee’s child is closed due to a public health emergency, or if the employee must care for a family member who has been officially quarantined due to exposure to a communicable disease. Paid sick time may be used in hourly increments or the smallest increment that the employer’s payroll system uses to account for time off.

## Employee Notice and Documentation

The law allows employers to require reasonable advance notice of an employee’s use of paid sick time, if foreseeable, although employers cannot require advance notice of more than seven days. If the leave is not foreseeable, the employer may require notice before the beginning of the employee’s work shift or work day, or as soon as practicable in emergencies.

For sick time of more than three consecutive days (or three consecutive instances, if used in increments less than one day), an employer can require reasonable documentation signed by a healthcare professional that the sick time has been used for a covered purpose. An employer cannot require, however, that documentation explain the nature of the illness.

## Notice and Posting Requirements

Employers must provide individual written notice to each employee about his or her rights under the ordinance at the time employment commences (or as soon as practicable if the employee is already employed as of the effective date of the ordinance). Employers must also display a poster containing notice of the ordinance in a conspicuous place in each business establishment where employees are employed. The notice must be in English and any other language that is the primary language of more than 10% of the employer’s workforce.

## Non-Retaliation and Penalty for Non-Compliance

Employers who violate the paid sick leave ordinance may be fined and ordered to pay restitution to the employee of any amount of paid sick leave unlawfully withheld. Also, employers cannot retaliate against any employee for exercising his/her rights under a paid sick leave ordinance.

## Jersey City Expands Its Paid Sick Time Ordinance

The 2015 amendments to Jersey City’s paid sick time ordinance aim to conform the ordinance to the more generous paid sick leave ordinances in other New Jersey municipalities. The most significant amendment provides employees of businesses with fewer than 10 employees up to 24 hours of paid sick time per year and, following the exhaustion of the 24 hours, up to 16 hours of unpaid sick time per year. Prior to this

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<sup>2</sup> A “family member” includes a biological, adopted, or foster child; stepchild or legal ward; a child of a domestic partner; a child of a civil union partner; or a child to whom the employee stands *in loco parentis*; a biological, foster, stepparent, or adoptive parent or legal guardian of an employee or an employee’s spouse, domestic partner or civil union partner or a person who stood *in loco parentis* when the employee was a minor child; a person to whom the employee is legally married under the laws of New Jersey or any other state or with whom the employee has entered into a civil union; a grandparent or spouse, civil union partner or domestic partner of a grandparent; a grandchild; a domestic partner; or a sibling.

amendment, the ordinance only provided unpaid sick time to employees of businesses with fewer than 10 employees. The amendments include an exception for child care workers, health care workers, and food service workers, who, regardless of the size of the employer, are required to receive 40 hours of paid sick leave per year. Further, employers with fewer than 10 employees are prohibited from mandating that employees exhaust unpaid sick time before using paid sick time.

The amendments also create an exception for employees covered by a collective bargaining agreement, allowing collective bargaining agreements to contain a clear and unambiguous waiver of the paid sick time leave law. Further, the definition of employee now specifically excludes members of a construction union who are covered by a collective bargaining agreement. In addition, the maximum penalty for violation of the statute has increased from \$1,250 to \$2,000.

The amendments also provide guidance on how to determine the number of employees performing work for an employer and instruct that full-time, part-time and temporary employees should be counted. When the number of employees fluctuates from year to year, the amendments clarify that employers should determine the number of employees for the current calendar year based upon the average number of employees who worked during the prior calendar year.

Jersey City, New Jersey's second largest city, was the first municipality in New Jersey to enact paid sick leave legislation.<sup>3</sup>

## **Recommendations**

Employers operating in Elizabeth and Jersey City should:

- Review and revise, if necessary, sick leave policies and procedures to ensure they meet the ordinances' requirements.
- Monitor Elizabeth's public notices and website for template notices, workplace posters, and trends with regard to enforcement.
- For Elizabeth employers, obtain posters and display them in a conspicuous place.
- Monitor Jersey City's Paid Sick Leave webpage for information regarding future updates to Jersey City's paid sick leave ordinance.
- Audit timekeeping, payroll, and benefits systems to ensure they properly calculate, track, and detail accrued and used sick time.
- Train supervisory and managerial employees, as well as human resources and payroll personnel, on the ordinances' requirements.

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<sup>3</sup> See Sebastian Chilco, *Paid Sick Leave Ordinance Adopted in Jersey City*, New Jersey, Littler Insight (Oct. 22, 2013).