

[Second Reprint]

ASSEMBLY, No. 2354

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED FEBRUARY 6, 2014

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Co-Sponsored by:

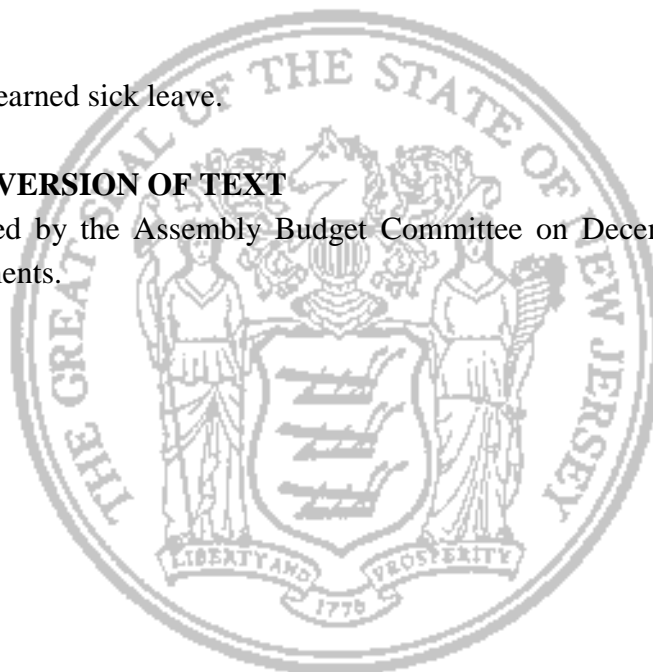
Assemblymen Diegnan, Benson, Assemblywoman Jasey, Assemblyman Garcia, Assemblywoman Watson Coleman, Assemblymen Giblin, Caputo and Holley

SYNOPSIS

Concerns earned sick leave.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on December 15, 2014, with amendments.



(Sponsorship Updated As Of: 3/27/2015)

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 ¹"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
13 ²[petitions] notifies² the commissioner ²[for a] of the² change in
14 accordance with regulations promulgated pursuant to this act.¹ ²The
15 commissioner shall impose a benefit year on any employer that the
16 commissioner determines is changing the benefit year at times or in
17 ways that prevent the accrual or use of earned sick leave by an
18 employee.²

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

23 "Child" means a biological, adopted, or foster child, stepchild or
24 legal ward of an employee, child of a domestic partner or civil
25 union partner of the employee, if the child is less than 19 years of
26 age, or is 19 years of age or older but incapable of self-care because
27 of mental or physical impairment.

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

30 "Commissioner" means the Commissioner of Labor and
31 Workforce Development.

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

34 "Designated domestic violence agency" means a county-wide
35 organization with a primary purpose to provide services to victims
36 of domestic violence, and which provides services that conform to
37 the core domestic violence services profile as defined by the
38 Division of ¹**[Youth and Family Services]** Child Protection and
39 Permanency¹ in the Department of Children and Families and is
40 under contract with the division for the express purpose of
41 providing the services.

42 "Domestic partner" means a domestic partner as defined in
43 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:

¹Assembly ALA committee amendments adopted October 27, 2014.

²Assembly ABU committee amendments adopted December 15, 2014.

1 "Domestic ¹or sexual¹ violence" means ¹stalking, any sexually
2 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-
3 27.26), or¹ domestic violence as defined in section 3 of P.L.1991,
4 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-6)¹],
5 stalking, or any sexually violent offense, as defined in section 3 of
6 P.L.1998, c.71 (C.30:4-27.26)]¹.

7 "Employee" means an individual engaged in service to an
8 employer in the business of the employer for compensation.
9 ¹"Employee" does not include an employee performing service in
10 the construction industry that is under contract pursuant to a
11 collective bargaining agreement.¹

12 "Employer" means any person, firm, business, educational
13 institution, nonprofit agency, corporation, limited liability company
14 or other entity that employs employees in the State.

15 "Family member" means a child, grandchild, sibling, spouse,
16 domestic partner, civil union partner, parent, or grandparent of an
17 employee, or a spouse, domestic partner, or civil union partner of a
18 parent or grandparent of the employee, or a sibling of a spouse,
19 "domestic partner, or civil union partner of the employee. ²"Family
20 member" shall also mean, if an employee does not have a spouse,
21 domestic partner, or civil union partner, any one person designated
22 by the employee for whom the employee may use earned sick leave
23 to care for as provided in paragraphs (2) and (3) of subsection a. of
24 section 3 of this act, and this designation may be changed by the
25 employee once annually, prior to the start of the preceding benefit
26 year.²

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

33 "Parent" means a biological, adoptive, or foster parent,
34 stepparent, or legal guardian of an employee or of the employee's
35 spouse, domestic partner, or civil union partner, or a person who
36 stood in loco parentis of the employee or the employee's spouse,
37 domestic partner, or civil union partner when the employee, spouse
38 or partner was a minor child.

39 "Retaliatory personnel action" means denial of any right
40 guaranteed under this act and any threat, constructive discharge,
41 suspension, demotion, unfavorable reassignment, refusal to
42 promote, disciplinary action, sanction, or any other adverse action
43 against an employee.

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

46 "Small employer" means an employer who had, on average,
47 fewer than 10 employees during the preceding calendar year, or

1 during the current year if the employer had no employees during the
2 preceding calendar year. Periods of time in which the employer had
3 no employees shall not be considered in determining the average
4 number of employees. In determining whether an employer is a
5 small employer, the number of employees shall include all
6 individuals working for compensation on a full-time, part-time or
7 temporary basis, including individuals made available to work at a
8 workplace of the employer through a temporary help services firm.

9 "Spouse" means a husband or wife.

10
11 2. a. Each employer shall provide earned sick leave to each
12 employee working for the employer in the State. For every 30 hours
13 worked, the employee shall accrue one hour of earned sick leave.
14 The employer shall not be required to permit the employee to
15 accrue at any one time, or carry forward from one ¹benefit¹ year to
16 the next, more than 40 hours of earned sick leave if the employer is
17 a small employer, or more than 72 hours of earned sick leave if the
18 employer is not a small employer. Unless the employee has accrued
19 earned sick leave prior to ¹January 1, 2014¹ the effective date of
20 this act¹, the earned sick leave shall begin to accrue on ¹January 1,
21 2014¹ the effective date of this act¹ ²or² for any employee hired
22 before the effective date of this act and the employee shall be
23 eligible to use the earned sick leave beginning² on the 90th day
24 after the hiring of the employee², and² if hired after ¹January 1,
25 2014¹ the effective date of this act¹, ²the earned sick leave shall
26 begin to accrue upon the date of hire and the employee shall be
27 eligible to use the earned sick leave beginning on the 90th day after
28 the hiring of the employee.² unless the employer agrees to an earlier
29 date. The employee may use earned sick leave as it is accrued.

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

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

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

1 ²e. If an employee is transferred to a separate division, entity, or
2 location, but remains employed by the same employer, then the
3 employee shall be entitled to all earned sick leave accrued at the
4 prior division, entity, or location, and shall be entitled to use the
5 accrued earned sick leave as provided in this act. If an employee is
6 terminated, laid off, furloughed, or otherwise separated from
7 employment with the employer, any unused accrued earned sick
8 leave shall be reinstated upon the re-hiring or reinstatement of the
9 employee to that employment, within six months of termination,
10 being laid off or furloughed, or separation, and prior employment
11 with the employer shall be counted towards meeting the eligibility
12 requirements set forth in this section.²

13

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

16 (1) Time needed for diagnosis, care, or treatment of, or recovery
17 from, an employee's mental or physical illness, injury or other
18 adverse health condition, or for preventive medical care for the
19 employee;

20 (2) Time needed for the employee to aid or care for a family
21 member of the employee during diagnosis, care, or treatment of, or
22 recovery from, the family member's mental or physical illness,
23 injury or other adverse health condition, or during preventive
24 medical care for the family member;

25 (3) Absence necessary due to circumstances resulting from the
26 employee, or a family member of the employee, being a victim of
27 domestic ¹or sexual¹ violence, if the leave is to allow the employee
28 to obtain for the employee or the family member: medical attention
29 needed to recover from physical or psychological injury or
30 disability caused by domestic ¹or sexual¹ violence; services from a
31 designated domestic violence agency or other victim services
32 organization; psychological or other counseling; relocation; or legal
33 services, including obtaining a restraining order or preparing for, or
34 participating in, any civil or criminal legal proceeding related to the
35 domestic ¹or sexual¹ violence; or

36 (4) Time during which the employee is not able to work because
37 of a closure of the employee's workplace, or the school or place of
38 care of a child of the employee, by order of a public official due to
39 an epidemic or other public health emergency, or because of the
40 issuance by a public health authority of a determination that the
41 presence in the community of the employee, or a member of the
42 employee's family in need of care by the employee, would
43 jeopardize the health of others.

44 b. If an employee's need to use earned sick leave is foreseeable,
45 an employer may require advance notice, not to exceed seven days
46 prior to the date the leave is to begin, of the intention to use the
47 leave and its expected duration, and shall make a reasonable effort
48 to schedule the use of earned sick leave in a manner that does not

1 unduly disrupt the operations of the employer. If the reason for the
2 leave is not foreseeable, an employer may require an employee to
3 give notice of the intention as soon as practicable. For earned sick
4 leave of three or more consecutive days, an employer may require
5 reasonable documentation that the leave is being taken for the
6 purpose permitted under subsection a. of this section. If the leave is
7 permitted under paragraph (1) or (2) of subsection a. of this section,
8 documentation signed by a health care professional who is treating
9 the employee or the family member of the employee indicating the
10 need for the leave and, if possible, number of days of leave, shall be
11 considered reasonable documentation. If the leave is permitted
12 under paragraph (3) of subsection a. of this section because of
13 domestic ¹or sexual¹ violence, any of the following shall be
14 considered reasonable documentation of the domestic ¹or sexual¹
15 violence: medical documentation; a law enforcement agency record
16 or report; a court order; documentation that the perpetrator of the
17 domestic ¹or sexual¹ violence has been convicted of a domestic ¹or
18 sexual¹ violence offense; certification from a certified Domestic
19 Violence Specialist or a representative of a designated domestic
20 violence agency or other victim services organization; or other
21 documentation or certification provided by a social worker,
22 counselor, member of the clergy, shelter worker, health care
23 professional, attorney, or other professional who has assisted the
24 employee or family member in dealing with the domestic ¹or
25 sexual¹ violence. If the leave is permitted under paragraph (4) of
26 subsection a. of this section, a copy of the order of the public
27 official or the determination by the health authority shall be
28 considered reasonable documentation. An employer who chooses to
29 require documentation for earned sick leave shall pay all out-of-
30 pocket expenses the employee incurs to obtain the documentation.

31 c. Nothing in this act shall be deemed to require an employer to
32 provide earned sick leave for an employee's leave for purposes
33 other than those identified in this section, or prohibit the employer
34 from taking disciplinary action against an employee who uses
35 earned sick leave for purposes other than those identified in this
36 section. ²An employer may provide an offer to an employee for a
37 payment of unused earned sick leave in the final month of the
38 employer's benefit year. The employee shall choose, no later than
39 10 calendar days from the date of the employer's offer, whether to
40 accept a payment or decline a payment. If the employee agrees to
41 receive a payment, the employee shall choose a payment for the full
42 amount of unused earned sick leave or for 50 percent of the amount
43 of unused earned sick leave. The payment amount shall be based on
44 the same rate of pay that the employee earns at the time of the
45 payment. If the employee declines a payment for unused earned
46 sick leave, or agrees to a payment for 50 percent of the amount of
47 unused sick leave, the employee shall be entitled to carry forward

1 any unused or unpaid earned sick leave to the proceeding benefit
2 year as provided pursuant to subsection a. of section 2 of this act. If
3 the employee agrees to a payment for the full amount of unused
4 earned sick leave, the employee shall not be entitled to carry
5 forward any earned sick leave to the proceeding benefit year
6 pursuant to subsection a. of section 2 of this act.² Unless an
7 employer policy or collective bargaining agreement provides for the
8 payment of accrued earned sick leave upon termination, resignation,
9 retirement or other separation from employment, an employee shall
10 not be entitled under this section to payment of unused earned sick
11 leave upon the separation from employment.

12 d. Any information an employer possesses regarding the health
13 of an employee or any family member of the employee or domestic
14 or sexual¹ violence affecting an employee or employee's family
15 member shall be treated as confidential and not disclosed except to
16 the affected employee or with the written permission of the affected
17 employee.

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

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

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

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

46
47 5. Any failure of an employer to make available or pay earned
48 sick leave as required by this act, or any other violation of this act,

1 shall be regarded as a failure to meet the wage payment
2 requirements of the “New Jersey State Wage and Hour Law,”
3 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,
4 as the case may be, and all remedies, penalties or other measures
5 provided by that act for failure to pay wages or other violations of
6 that act shall be applicable, including, but not limited to, penalties
7 provided pursuant to sections 23 and 25 of that act (C.34:11-56a22
8 and 34:11-56a24), and civil actions by employees pursuant to
9 section 26 of that act (C.34:11-56a25), except that an award to an
10 employee in a civil act shall include, in addition to the amount
11 provided pursuant to section 26 of that act (C.34:11-56a25), any
12 actual damages suffered by the employee as the result of the
13 violation plus an equal amount of liquidated damages.
14

15 6. Employers shall retain records documenting hours worked
16 by employees and earned sick leave taken by employees, for a
17 period of five years, and shall, upon demand, allow the department
18 access to those records to monitor compliance with the
19 requirements of this act. If an employee makes a claim that the
20 employer has failed to provide earned sick leave required by this act
21 and the employer has not maintained or retained adequate records
22 documenting hours worked by the employee and earned sick leave
23 taken by the employee or does not allow the department access to
24 the records, it shall be presumed that the employer has failed to
25 provide the earned sick leave, absent clear and convincing evidence
26 otherwise. In addition, the penalties provided by the “New Jersey
27 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.)
28 for violations of the requirements of that act regarding the
29 maintaining and disclosure of records shall apply to violations of
30 the requirements of this section.
31

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

1 notification in English, Spanish or any other language for which the
2 commissioner has provided notifications and which is the first
3 language of a majority of the employer's workforce.

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

9
10 8. a. This act provides minimum requirements pertaining to
11 earned sick leave and shall not be construed to preempt, limit, or
12 otherwise affect the applicability of any other federal, State or local
13 law, ordinance, regulation, requirement, policy, or standard that
14 provides rights or benefits to employees which are more favorable
15 to employees than those required by this act or which provide rights
16 or benefits to employees not covered by this act.

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

19 (1) Requiring an employer to reduce, or justifying an employer
20 in reducing, rights or benefits provided by the employer pursuant to
21 an employer policy or collective bargaining agreement which are
22 more favorable to employees than those required by this act or
23 which provide rights or benefits to employees not covered by this
24 act;

25 (2) Preventing or prohibiting the employer from agreeing,
26 through a collective bargaining agreement or employer policy, to
27 provide rights or benefits which are more favorable to employees
28 than those required by this act or to provide rights or benefits to
29 employees not covered by this act; ²**[or]**²

30 (3) Prohibiting an employer from establishing a policy whereby
31 an employee may donate unused accrued earned sick leave to
32 another employee or other employees²; or

33 (4) Superseding any law providing collective bargaining rights
34 for employees, or in any way reducing, diminishing, or adversely
35 affecting those collective bargaining rights, or in any way reducing,
36 diminishing, or affecting the obligations of employers under those
37 laws².

38 ¹c. With respect to employees covered by a collective
39 bargaining agreement in effect at the time of the effective date of
40 this act, no provision of this act shall apply until the expiration of
41 the collective bargaining agreement.¹

42
43 9. The commissioner shall adopt rules and regulations pursuant to
44 the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-
45 1 et seq.) to effectuate the purposes of this act.

46 10. This act shall take effect on the 120th day following
47 enactment.