

# NEW JERSEY EMPLOYMENT LAW Paid Sick Leave



New Jersey’s [Paid Sick Leave Act](#) (Act) requires virtually all employers to provide paid sick leave to employees, effective Oct. 29, 2018. Under the Act, employees must accrue **one hour** of paid sick leave for every 30 hours worked, up to **40 hours per year**. However, employers may require employees to wait 120 calendar days after their hire date to use any accrued paid sick leave.

In general, employees may use paid sick leave to care for an ill family member or for their own medical condition, to deal with issues related to domestic or sexual violence, to attend a child’s school-related meeting or event, or when schools are closed due to a public health emergency. Employees must be paid for paid sick leave at the same rate they normally earn. In addition, employers must notify employees about their rights to paid sick leave when they begin employment. This Employment Law Summary provides an overview of New Jersey’s paid sick leave law.

## STATE RESOURCES

**New Jersey Department of Labor and Workforce Development (Department)**  
[https://nj.gov/labor/earned\\_sick/index.html](https://nj.gov/labor/earned_sick/index.html)

**FAQs**  
The Department has published these [answers](#) to frequently asked questions.

**Notice of Employee Rights**  
Employers are required to provide a [Notice of Employee Rights](#)

**Proposed Rules**  
The Department issued [proposed rules](#) on the Act’s requirements on Sept. 13, 2018.

## COVERED EMPLOYERS

All employers in New Jersey must comply with the Act’s requirements. There is no exception for small employers. An employer with a paid leave policy (including, for example, vacation, paid time off and sick leave) that is at least as favorable to employees as the Act is not required to provide employees with additional paid sick leave. The employer’s policy must provide at least the same amount of paid leave and allow employees to use paid leave for the same purposes as the Act.

## ELIGIBLE EMPLOYEES

Most employees working in New Jersey will be eligible for paid sick leave accrual and use, including part-time and seasonal employees. However, the Act specifically excludes certain types of employees. For example, construction workers employed under a collective bargaining agreement (CBA), per diem health care workers and public employees who are currently provided with paid sick leave benefits are not entitled to paid sick leave under the Act.

Also, the Act does not apply to employees who are covered by a CBA that is in effect at the time the paid sick leave law becomes effective. This exception continues until the CBA expires. In addition, employees or employee representatives may waive their rights under the Act while negotiating a CBA.



### ACCRUAL OF PAID SICK LEAVE

Employees accrue **one hour of paid sick leave for every 30 hours worked, up to 40 hours per benefit year**. The benefit year is any consecutive 12-month period, as established by the employer. Once the benefit year has been established, the employer may not change it without notifying the Department.

Employees begin accruing paid sick leave on the Act's effective date. Employees hired after the Act's effective date begin accruing paid sick leave when they are hired.

Instead of tracking paid sick leave accruals, employers may provide employees with the entire amount of paid sick leave the employee would earn (up to 40 hours) on the first day of the benefit year. At the end of the benefit year, an employer who advanced paid sick leave in this way must either:

- Pay the employee for the full amount of unused paid sick leave; or
- Carry over unused paid sick leave into the next benefit year.

### USING PAID SICK LEAVE

Employers may require employees to wait **120 calendar days** after their hire date to use any accrued paid sick leave. (Employees who were employed for at least 120 calendar days on the Act's effective date may use paid sick leave as it is accrued.) Employees may use up to 40 hours of paid sick leave per benefit year for any of the following reasons:

1	Preventive medical care for the employee or for diagnosis, care, treatment or recovery from an employee's own mental or physical illness, injury or other adverse health condition
2	Time needed for the employee to care for his or her family member during diagnosis, care, treatment or recovery from the family member's mental or physical illness, injury or other adverse health condition or for the family member's preventive medical care
3	Time off needed due to the employee, or an employee's family member, being a victim of domestic or sexual violence to allow the victim to obtain: <ul style="list-style-type: none"><li>• Medical attention required to recover from physical or psychological injury due to domestic or sexual violence;</li><li>• Services from a designated domestic violence agency or other victim services organization;</li><li>• Psychological or other counseling;</li><li>• Relocation; or</li><li>• Legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding relating to the domestic or sexual violence</li></ul>
4	Time off when the employee cannot work due to the closure of the employee's workplace or the closure of the employee's child's school or place of care if the closure is: <ul style="list-style-type: none"><li>• By order of a public official due to an epidemic or other public health emergency; or</li><li>• Because a public health authority determines that the presence in the community of the employee (or an employee's family member in need of care by the employee) would jeopardize the health of others</li></ul>



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Time off in connection with the employee’s child for the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher or other professional staff member responsible for the child’s education, or to attend a meeting regarding care provided to the employee’s child in connection with the child’s health condition or disability

An employer and employee may mutually agree for the employee to work additional hours or shifts in the same or following pay period in lieu of using accrued paid sick leave for time missed. However, the employee cannot be required to work additional hours or shifts, or be required to find a replacement worker to cover the hours an employee is using paid sick leave.

Employers are free to establish the increments of paid sick leave use. However, an employer may not establish an increment of paid sick leave use that exceeds the employee’s scheduled shift.

An employee’s “family member” is defined very broadly under the Act and includes:

- A child, grandchild, sibling, spouse, domestic partner, civil union partner, parent or grandparent of the employee;
- A spouse, domestic partner or civil union partner of a parent or grandparent of the employee;
- A sibling of a spouse, domestic partner or civil union partner of the employee; or
- Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

Employees using paid sick leave must be paid the same rate of pay—with the same benefits—that they normally earn, so long as the pay rate is not less than the applicable minimum wage.

### EMPLOYEE NOTICE REQUIREMENTS

When the need to use paid sick leave is foreseeable, an employer may require its employees to provide advance notice of **up to seven calendar days** before using leave.

The employee may be required to schedule paid sick leave in a manner that does not unduly disrupt the employer’s operations. In addition, an employer may prohibit the use of foreseeable paid sick leave on certain dates and require reasonable documentation if sick leave that is not foreseeable is used on those dates.

When the need to use paid sick leave is not foreseeable, employees must provide the employer with notice as soon as practicable, if the employee has been notified of the requirement to do so.

### DOCUMENTATION OF PAID SICK LEAVE USE

If an employee uses paid sick leave for **three or more consecutive days**, an employer may require reasonable documentation that the leave is being used for a reason that is permitted by the Act. Any documentation obtained by the employer must be kept confidential. Employers may discipline employees who use paid sick leave for a purpose other than the purposes that are permitted under the Act.



### CARRY-OVER REQUIREMENTS

In the final month of the employer's benefit year, an employer may (but is not required to) offer employees the option to receive payment of unused paid sick leave. Employees must be given 10 calendar days from the date of the employer's offer to:

- Accept full payment of unused paid sick leave;
- Accept payment for 50 percent of the amount of unused paid sick leave; or
- Decline the employer's offer to pay out unused paid sick leave.

If the employee chooses to receive 50 percent payment for unused paid sick leave or declines the payment, the employee will carry over up to 40 hours of unused paid sick leave to the next benefit year. If the employee accepts full payment, no carryover is required.

Employers that choose to advance paid sick leave must either pay out employees' unused paid sick leave at the end of the benefit year or carry over employees' unused paid sick leave to the next benefit year. An employer may only pay out unused paid sick leave of an employee who was front-loaded with paid sick leave if the employer forgoes the accrual process for that employee in the next benefit year. This means that an employer cannot pay out unused, advanced paid sick leave at the end of the benefit year, and then require the employee to accrue paid sick leave in the following benefit year.

### TERMINATION AND REHIRE REQUIREMENTS

Employers are not required to pay employees for unused paid sick leave upon separation from employment. If an employee separates employment with an employer and is rehired or reinstated **within six months**, any unused, accrued paid sick leave must be reinstated upon the employee's rehire. In addition, the employee's prior employment with the employer counts toward meeting the eligibility requirements (such as the 120-day waiting period).

### EMPLOYEE PROTECTIONS

Employers are prohibited from counting an employee's permitted paid sick leave absence as an absence that will result in discipline, discharge, demotion, suspension or loss or reduction in pay or any other adverse action. Also, employers may not retaliate or discriminate against an employee who requests or uses paid sick leave under the Act, or the employer's own paid leave policy.

### EMPLOYER NOTICE AND RECORDKEEPING REQUIREMENTS

The Department has provided a [model notice](#) for employers to use to inform employees of their rights under the Act. The notice includes information on the amount of paid sick leave employees are entitled to and the remedies available if an employer fails to provide the required benefits or retaliates against employees for exercising their rights.

**New employees must receive this written notice when they begin employment.** An employer must also provide the notice upon an employee's request. Employers were required to provide this notice to existing employees by Nov. 29, 2018.



### **PREEMPTION OF LOCAL PAID SICK LEAVE ORDINANCES**

The Act preempts any local paid sick leave ordinance enacted prior to, or after, the Act’s effective date. This means, for example, employers located in Jersey City, Trenton and Montclair must comply with only the statewide paid sick leave requirements. The Act also preempts any future county or municipal ordinances, resolutions, laws, rules or regulations regarding paid sick leave.