

January 23, 2015

The Explosion of Paid Sick Leave In New Jersey

By Stacey Adams and Jessica Agarwal

The trend of municipalities in New Jersey enacting paid sick leave ordinances continues. Littler previously reported on the enactment of two such laws in Jersey City (effective January 24, 2014)¹ and Newark (effective May 29, 2014).² Since that time, an additional six municipalities in New Jersey have passed paid sick leave laws including Passaic, East Orange, Paterson, Irvington, Trenton and Montclair. For the most part, the ordinances are consistent and generally model Newark's paid sick leave law, which differs from the Jersey City sick leave law.

Now, New Jersey is considering state-wide paid sick leave legislation. On Monday, October 27, 2014, the New Jersey Assembly Labor Committee voted 6-3 for a state-wide paid sick leave law. Under the bill, employers with less than 10 employees would be required to provide up to 40 hours of earned sick leave, while employers with more than 10 employees would be required to provide up to 72 hours. Notably, the bill as proposed would not preempt more generous local laws. On December 15, 2014, the Assembly Budget Committee voted in favor of the bill by 6-4. The next step for the bill is a full vote in the Assembly, although indications from current Assembly members are that substantial modifications will be necessary before it is presented on the Assembly floor. A corresponding bill was introduced in the New Jersey Senate in January 2014 but has not advanced.

It appears that the White House is also jumping on the bandwagon. On January 20, 2015 during his State of the Union speech, President Obama requested Congress to pass a law that would allow employees to earn up to seven paid sick days per year.

Effective Dates

Each of the local New Jersey paid sick leave laws takes effect 120 days after enactment:

MUNICIPALITY	EFFECTIVE DATE
Passaic	December 31, 2014
East Orange	January 6, 2015
Paterson	January 7, 2015
Irvington	January 28, 2015
Trenton	March 4, 2015
Montclair	March 4, 2015

1 See Eboneé Hamilton Lewis and Sebastian Chilco, [Paid Sick Leave Ordinance Adopted in Jersey City, New Jersey](#), Littler ASAP (Oct. 22, 2013).

2 See Eboneé Hamilton Lewis and Lauren Marcus, [Newark Follows Jersey City to Enact Paid Sick Time Law](#), Littler ASAP (Mar. 4, 2014).

Covered Employers & Employees

The ordinances apply 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 clearly and unambiguously waive the requirements of paid sick leave laws in their collective bargaining agreement.³

Accrual, Advances, Caps, and Carry-Over

Beginning after the 90th calendar day of their employment, employees accrue one hour of paid sick leave for every 30 hours of work performed by the employee. For employers with 10 or more employees, total paid sick time is capped at 40 hours per year. For employers with 10 or less 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 total number of employees. Exempt employees are assumed to work 40 hours per week for purposes of accrual under the ordinances.

Employees are permitted to 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* that 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.⁴ There are some additional circumstances when paid sick leave can be used such as 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 increments of less than one day at the employer’s discretion.

Employee Notice and Documentation

The law allows employers to require reasonable advance notice of an employee’s use of paid sick time, if foreseeable. 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. To the extent an employer possesses the health information of an employee or his/her family member, such information must be treated as confidential and cannot be disclosed, except to the affected employee with his or her permission.

3 If a collective bargaining agreement is already in effect as of the effective date of the ordinance, the ordinance shall not apply until the expiration of the current collective bargaining agreement.

4 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.

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 in a conspicuous place in each business establishment where employees are employed containing notice of the ordinance. The notice must be in English and any other language that is the primary language of more than 10% of the employer's work force.

Non-Retaliation and Penalty for Non-Compliance

Employers who violate the paid sick leave ordinance may be fined up to \$500 per day for each day in which a violation occurs, in addition to 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.

Recommendations

Employers operating in affected municipalities should:

- Review and revise, if necessary, sick leave policies and procedures to ensure they meet the ordinances' requirements, including anti-retaliation provisions.
- Monitor the overseeing municipal agency's public notices and website for template notices, workplace posters, and trends with regard to enforcement.
- Obtain posters and display them in a conspicuous place.
- 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.
- Consider transitioning to a PTO or Paid Time Off policy that encompasses a number of different types of leaves, including paid sick leave.

[Stacey Adams](#) is a Shareholder, and [Jessica Agarwal](#) is an Associate, in Littler's Newark office. If you would like further information, please contact your Littler attorney at 1-888-Littler or info@littler.com, Ms. Adams at sdadams@littler.com, or Ms. Agarwal at jagarwal@littler.com.