



October 17, 2018

Paid “Sick” Leave Law: What you need to know

After six years of fighting in the Legislature, a bill mandating that every employer in the state give every employee paid leave was signed into law on May 2, 2018. It passed the Assembly 50-24 in March and the Senate 24-12 in April. **The new law goes into effect October 29, 2018**. Here is what you need to know to be ready in October. This new law is very specific, so even if you think you are already generous enough with your leave policies, make sure you read through and are in full compliance.

Every employee must be given one hour of paid sick leave (PSL) for every 30 hours they work. An employee must be able to save up at least 40 hours of PSL per year (employers are allowed to define when a year starts, it does not have to match the calendar year, but once the year has been defined it can only be changed with approval from DOL). Employers are allowed to give their employees all of their PSL upfront at the start of the year instead of tracking it on an hourly basis, but they are not required to do so. If at the end of the year an employee still has some PSL they haven't used, they must be allowed to carry it forward into the new year. An employer is not required to let an employee use more than 40 hours of PSL in any year.

Employees will begin earning their PSL on October 29th. While employees start earning PSL on their first day of work, the employer is able to prevent them from using the PSL until they have been employed for 120 calendar days. Employers who offer existing paid leave are in compliance with this law as long as their leave policy is at least as generous (in every single way) as that mandated by this law.

The employee must be paid “at the same rate of pay with the same benefits as the employee normally earns”. If the employee is using PSL for hours when they would have been working overtime, they are to be compensated at their regular rate of pay, they do not need to be given time-and-a-half (this was clarified by recent regulations).

An employer cannot require an employee find a replacement worker to cover any hours they take off with PSL. If you shift an employee from one location to another, that employee keeps all the PSL they have earned. If an employee leaves your business, but returns within six months, they must be given back all of the PSL they had saved up.

There are currently 13 cities in NJ which require employers to provide PSL in some form. When this law goes into effect, those laws will all be repealed and replaced by the state law. No local government going forward will be able to make ordinances regulating PSL.

What are the conditions that employees are allowed to use their PSL?

- Time off for the employee to receive or recover from any medical care, including preventative care, mental health care, or to recover from an instance of domestic violence.
- Time needed for the employee to aid a family member with any of the above.
 - Who is a “family member”? The law defines it as a child, grandchild, sibling, spouse, parent, grandparent, the spouse or sibling of any of those people, any other blood relative, or any other person “whose close association with the employee is the equivalent of a family relationship”.
- Time for the employee to take their child to a school-related event.
- Employers cannot request proof that any of these conditions were met unless the employee uses PSL on three or more consecutive days.
 - If an employee takes PSL and uses it for other purposes, the burden of proof is on the employer to prove the employee misused their paid time off before any disciplinary action is taken.
- What about non-hourly workers?
 - The employer can either assume these employees work 40 hours a week, or can keep track of the actual hours worked.

What restrictions can an employer place on PSL?

- Employers are allowed to set a minimum for the number of hours of PSL an employee can take at a time.
 - For example, an employer can say that an employee cannot only take off one or two hours at a time for a doctor’s appointment, they must take off their entire shift so that a different employee can more easily fill the spot.
- If the employee’s leave is foreseeable (like a doctor appointment), then the employer may require advance notice as much as seven days ahead of time.
- Employers can set “blackout dates” for PSL, in which employees cannot use foreseeable PSL, and if it is unforeseeable then the employee must provide proof, even if they are only out for a few hours. The new regulations restrict what an employer can use as a blackout date:
 - It must be “verifiable high-volume periods or special events, during which permitting the use of foreseeable earned sick leave would unduly disrupt the operations of the employer.” Examples provided include a new product launch or a predictable increase in customer activity, such as around a holiday.
 - “Reasonable notice” must be provided to the employees that a date is a “blackout date”

Notifications

- Records must be kept for 5 years, showing all hours worked by all employees and all hours of PSL given to every employee, taken by every employee, and carried over from year to year.
 - If an employee files a claim against the employer, and the employer does not have the records available, DOL will assume the employee's claim is correct.
- Employers must give every employee a special form, which has been created by the Department of Labor, telling the employee what their rights are under this law.
 - This notification must be posted in the workplace.
 - Every new employee must be given this form
 - Every current employee must be given this form before November 29, 2018
 - You are allowed to email this notification to your employees in order to meet the obligation
 - You can find the form online at www.njgca.org/PSL

Penalties

- An employer cannot take any “retaliatory action” against an employee for using their PSL.
- Employers must treat any information they have about the health of an employee or their family member as confidential and not disclose it without the written permission of the employee.
 - So if another employee asks why their colleague is taking the day off, make sure you don't tell them!
- If an employer takes an “adverse action” against an employee within 90 days of that employee informing another employee of their rights under this law, or cooperating in some way with a Department of Labor investigation, or filing a complaint with the DOL, then the employer is presumed guilty unless they can prove the adverse action was taken for another reason.
- The penalties for violating this law will be a disorderly persons offense, which is punished on the first violation by a fine between \$100-\$1,000 or imprisonment of up to 90 days. In addition an employer will have to provide the employee with back pay.

If you would like to read the actual language of the law yourself, you can visit NJGCA's website or search for NJ P.L. 2018, Chapter 10.