

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2171**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

ADOPTED MARCH 26, 2018

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

**Senators Pou and Stack**

**SYNOPSIS**

Concerns earned sick leave to employees.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Labor Committee.



**(Sponsorship Updated As Of: 4/13/2018)**

1 AN ACT concerning earned sick leave and supplementing P.L.1966,  
2 c.113 (C.34:11-56a et seq.).

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 “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 notifies  
13 the commissioner of the change in accordance with regulations  
14 promulgated pursuant to this act. The commissioner shall impose a  
15 benefit year on any employer that the commissioner determines is  
16 changing the benefit year at times or in ways that prevent the  
17 accrual or use of earned sick leave by an employee.

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

22 “Child” means a biological, adopted, or foster child, stepchild or  
23 legal ward of an employee, child of a domestic partner or civil  
24 union partner of the employee.

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

27 “Commissioner” means the Commissioner of Labor and  
28 Workforce Development.

29 “Department” means the Department of Labor and Workforce  
30 Development.

31 “Designated domestic violence agency” means a county-wide  
32 organization with a primary purpose to provide services to victims  
33 of domestic violence, and which provides services that conform to  
34 the core domestic violence services profile as defined by the  
35 Division of Child Protection and Permanency in the Department of  
36 Children and Families and is under contract with the division for  
37 the express purpose of providing the services.

38 “Domestic or sexual violence” means stalking, any sexually  
39 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-  
40 27.26), or domestic violence as defined in section 3 of P.L.1991,  
41 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

42 “Domestic partner” means a domestic partner as defined in  
43 section 3 of P.L.2003, c.246 (C.26:8A-3).

44 “Employee” means an individual engaged in service to an  
45 employer in the business of the employer for compensation.  
46 “Employee” does not include an employee performing service in the  
47 construction industry that is under contract pursuant to a collective  
48 bargaining agreement, or a per diem health care employee, or a

1 public employee who is provided with sick leave with full pay  
2 pursuant to any other law, rule, or regulation of this State.

3 “Employer” means any person, firm, business, educational  
4 institution, nonprofit agency, corporation, limited liability company  
5 or other entity that employs employees in the State, including a  
6 temporary help service firm. In the case of a temporary help service  
7 firm placing an employee with client firms, earned sick leave shall  
8 accrue on the basis of the total time worked on assignment with the  
9 temporary help service firm, not separately for each client firm to  
10 which the employee is assigned. “Employer” does not include a  
11 public employer that is required to provide its employees with sick  
12 leave with full pay pursuant to any other law, rule or regulation of  
13 this State.

14 “Family member” means a child, grandchild, sibling, spouse,  
15 domestic partner, civil union partner, parent, or grandparent of an  
16 employee, or a spouse, domestic partner, or civil union partner of a  
17 parent or grandparent of the employee, or a sibling of a spouse,  
18 domestic partner, or civil union partner of the employee, or any  
19 other individual related by blood to the employee or whose close  
20 association with the employee is the equivalent of a family  
21 relationship.

22 “Health care professional” means any person licensed under  
23 federal, State, or local law, or the laws of a foreign nation, to  
24 provide health care services, or any other person who has been  
25 authorized to provide health care by a licensed health care  
26 professional, including but not limited to doctors, nurses and  
27 emergency room personnel.

28 “Parent” means a biological, adoptive, or foster parent,  
29 stepparent, or legal guardian of an employee or of the employee’s  
30 spouse, domestic partner, or civil union partner, or a person who  
31 stood in loco parentis of the employee or the employee’s spouse,  
32 domestic partner, or civil union partner when the employee, spouse  
33 or partner was a minor child.

34 “Per diem health care employee” means any:

35 (1) health care professional licensed in the State of New Jersey  
36 employed by a health care facility licensed by the New Jersey  
37 Department of Health;

38 (2) any individual that is in the process of applying to the New  
39 Jersey Division of Consumer Affairs for a license to provide health  
40 care services who is employed by a health care facility licensed by  
41 the New Jersey Department of Health; or

42 (3) any first aid, rescue or ambulance squad member employed  
43 by a hospital system.

44 An employee listed in paragraphs (1), (2), and (3) of this  
45 definition shall be considered a per diem health care employee if  
46 that employee:

1 (1) works on an as-needed basis to supplement a health care  
2 employee, or to replace or substitute for a temporarily absent health  
3 care employee;

4 (2) works only when the employee indicates that the employee  
5 is available to work, and has no obligation to work when the  
6 employee does not indicate availability; and

7 (3) either:

8 (a) has the opportunity for full time or part time employment in  
9 their scope of practice under that healthcare provider which offers  
10 paid time off benefits greater in length than provided under this act  
11 under the terms of employment; or

12 (b) has waived earned sick leave benefits as provided under this  
13 act under terms of employment for alternative benefits or  
14 consideration.

15 “Per diem health care employee” shall not include any individual  
16 who is certified as a homemaker-home health aide.

17 “Retaliatory personnel action” means denial of any right  
18 guaranteed under this act and any threat, discharge, including a  
19 constructive discharge, suspension, demotion, unfavorable  
20 reassignment, refusal to promote, disciplinary action, sanction,  
21 reduction of work hours, reporting or threatening to report the  
22 actual or suspected immigrant status of an employee or the  
23 employee’s family, or any other adverse action against an  
24 employee.

25 “Sibling” means a biological, foster, or adopted sibling of an  
26 employee.

27 “Spouse” means a husband or wife.

28

29 2. a. Each employer shall provide earned sick leave to each  
30 employee working for the employer in the State. For every 30 hours  
31 worked, the employee shall accrue one hour of earned sick leave,  
32 except that an employer may provide an employee with the full  
33 complement of earned sick leave for a benefit year, as required  
34 under this section, on the first day of each benefit year in  
35 accordance with subsection c. or subsection d. of section 3 of this  
36 act. The employer shall not be required to permit the employee to  
37 accrue or use in any benefit year, or carry forward from one benefit  
38 year to the next, more than 40 hours of earned sick leave. Unless  
39 the employee has accrued earned sick leave prior to the effective  
40 date of this act, the earned sick leave shall begin to accrue on the  
41 effective date of this act for any employee who is hired and  
42 commences employment before the effective date of this act and the  
43 employee shall be eligible to use the earned sick leave beginning on  
44 the 120th calendar day after the employee commences employment,  
45 and if the employment commences after the effective date of this  
46 act, the earned sick leave shall begin to accrue upon the date that  
47 employment commences and the employee shall be eligible to use  
48 the earned sick leave beginning on the 120th calendar day after the

1 employee commences employment, unless the employer agrees to  
2 an earlier date. The employee may subsequently use earned sick  
3 leave as soon as it is accrued.

4 b. An employer shall be in compliance with this section if the  
5 employer offers paid time off, which is fully paid and shall include,  
6 but is not limited to personal days, vacation days, and sick days,  
7 and may be used for the purposes of section 3 of this act in the  
8 manner provided by this act, and is accrued at a rate equal to or  
9 greater than the rate described in this section.

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

15 d. Upon the mutual consent of the employee and employer, an  
16 employee may voluntarily choose to work additional hours or shifts  
17 during the same or following pay period, in lieu of hours or shifts  
18 missed, but shall not be required to work additional hours or shifts  
19 or use accrued earned sick leave. An employer may not require, as  
20 a condition of an employee's using earned sick leave, that the  
21 employee search for or find a replacement worker to cover the  
22 hours during which the employee is using earned sick leave.

23 e. If an employee is transferred to a separate division, entity, or  
24 location, but remains employed by the same employer, then the  
25 employee shall be entitled to all earned sick leave accrued at the  
26 prior division, entity, or location, and shall be entitled to use the  
27 accrued earned sick leave as provided in this act. If an employee is  
28 terminated, laid off, furloughed, or otherwise separated from  
29 employment with the employer, any unused accrued earned sick  
30 leave shall be reinstated upon the re-hiring or reinstatement of the  
31 employee to that employment, within six months of termination,  
32 being laid off or furloughed, or separation, and prior employment  
33 with the employer shall be counted towards meeting the eligibility  
34 requirements set forth in this section. When a different employer  
35 succeeds or takes the place of an existing employer, all employees  
36 of the original employer who remain employed by the successor  
37 employer are entitled to all of the earned sick leave they accrued  
38 when employed by the original employer, and are entitled to use the  
39 earned sick leave previously accrued immediately.

40 f. An employer may choose the increments in which its  
41 employees may use earned sick leave, provided that the largest  
42 increment of earned sick leave that an employee may be required to  
43 use for each shift for which earned sick leave is used shall be the  
44 number of hours the employee was scheduled to work during that  
45 shift.

46  
47 3. a. An employer shall permit an employee to use the earned  
48 sick leave accrued pursuant to this act for any of the following:

- 1 (1) time needed for diagnosis, care, or treatment of, or recovery  
2 from, an employee's mental or physical illness, injury or other  
3 adverse health condition, or for preventive medical care for the  
4 employee;
  - 5 (2) time needed for the employee to aid or care for a family  
6 member of the employee during diagnosis, care, or treatment of, or  
7 recovery from, the family member's mental or physical illness,  
8 injury or other adverse health condition, or during preventive  
9 medical care for the family member;
  - 10 (3) absence necessary due to circumstances resulting from the  
11 employee, or a family member of the employee, being a victim of  
12 domestic or sexual violence, if the leave is to allow the employee to  
13 obtain for the employee or the family member: medical attention  
14 needed to recover from physical or psychological injury or  
15 disability caused by domestic or sexual violence; services from a  
16 designated domestic violence agency or other victim services  
17 organization; psychological or other counseling; relocation; or legal  
18 services, including obtaining a restraining order or preparing for, or  
19 participating in, any civil or criminal legal proceeding related to the  
20 domestic or sexual violence;
  - 21 (4) time during which the employee is not able to work because  
22 of a closure of the employee's workplace, or the school or place of  
23 care of a child of the employee, by order of a public official due to  
24 an epidemic or other public health emergency, or because of the  
25 issuance by a public health authority of a determination that the  
26 presence in the community of the employee, or a member of the  
27 employee's family in need of care by the employee, would  
28 jeopardize the health of others; or
  - 29 (5) time needed by the employee in connection with a child of  
30 the employee to attend a school-related conference, meeting,  
31 function or other event requested or required by a school  
32 administrator, teacher, or other professional staff member  
33 responsible for the child's education, or to attend a meeting  
34 regarding care provided to the child in connection with the child's  
35 health conditions or disability.
- 36 b. If an employee's need to use earned sick leave is foreseeable,  
37 an employer may require advance notice, not to exceed seven  
38 calendar days prior to the date the leave is to begin, of the intention  
39 to use the leave and its expected duration, and shall make a  
40 reasonable effort to schedule the use of earned sick leave in a  
41 manner that does not unduly disrupt the operations of the employer.  
42 If the reason for the leave is not foreseeable, an employer may  
43 require an employee to give notice of the intention as soon as  
44 practicable, if the employer has notified the employee of this  
45 requirement. Employers may prohibit employees from using  
46 foreseeable earned sick leave on certain dates, and require  
47 reasonable documentation if sick leave that is not foreseeable is  
48 used during those dates. For earned sick leave of three or more

1 consecutive days, an employer may require reasonable  
2 documentation that the leave is being taken for the purpose  
3 permitted under subsection a. of this section. If the leave is  
4 permitted under paragraph (1) or (2) of subsection a. of this section,  
5 documentation signed by a health care professional who is treating  
6 the employee or the family member of the employee indicating the  
7 need for the leave and, if possible, number of days of leave, shall be  
8 considered reasonable documentation. If the leave is permitted  
9 under paragraph (3) of subsection a. of this section because of  
10 domestic or sexual violence, any of the following shall be  
11 considered reasonable documentation of the domestic or sexual  
12 violence: medical documentation; a law enforcement agency record  
13 or report; a court order; documentation that the perpetrator of the  
14 domestic or sexual violence has been convicted of a domestic or  
15 sexual violence offense; certification from a certified Domestic  
16 Violence Specialist or a representative of a designated domestic  
17 violence agency or other victim services organization; or other  
18 documentation or certification provided by a social worker,  
19 counselor, member of the clergy, shelter worker, health care  
20 professional, attorney, or other professional who has assisted the  
21 employee or family member in dealing with the domestic or sexual  
22 violence. If the leave is permitted under paragraph (4) of  
23 subsection a. of this section, a copy of the order of the public  
24 official or the determination by the health authority shall be  
25 considered reasonable documentation.

26 c. Nothing in this act shall be deemed to require an employer to  
27 provide earned sick leave for an employee's leave for purposes  
28 other than those identified in this section, or prohibit the employer  
29 from taking disciplinary action against an employee who uses  
30 earned sick leave for purposes other than those identified in this  
31 section. An employer may provide an offer to an employee for a  
32 payment of unused earned sick leave in the final month of the  
33 employer's benefit year. The employee shall choose, no later than  
34 10 calendar days from the date of the employer's offer, whether to  
35 accept a payment or decline a payment. If the employee agrees to  
36 receive a payment, the employee shall choose a payment for the full  
37 amount of unused earned sick leave or for 50 percent of the amount  
38 of unused earned sick leave. The payment amount shall be based on  
39 the same rate of pay that the employee earns at the time of the  
40 payment. If the employee declines a payment for unused earned  
41 sick leave, or agrees to a payment for 50 percent of the amount of  
42 unused sick leave, the employee shall be entitled to carry forward  
43 any unused or unpaid earned sick leave to the proceeding benefit  
44 year as provided pursuant to subsection a. of section 2 of this act. If  
45 the employee agrees to a payment for the full amount of unused  
46 earned sick leave, the employee shall not be entitled to carry  
47 forward any earned sick leave to the proceeding benefit year  
48 pursuant to subsection a. of section 2 of this act.

1 d. If an employer foregoes the accrual process for earned sick  
2 leave hours pursuant to subsection a. of section 2 of this act and  
3 provides an employee with the full complement of earned sick leave  
4 for a benefit year on the first day of each benefit year, then the  
5 employer shall either provide to the employee a payment for the full  
6 amount of unused earned sick leave in the final month of the  
7 employer's benefit year or carry forward any unused sick leave to  
8 the next benefit year. The employer may pay the employee the full  
9 amount of unused earned sick leave in the final month of a benefit  
10 year pursuant to this subsection only if the employer forgoes, with  
11 respect to that employee, the accrual process for earned sick leave  
12 during the next benefit year. Unless an employer policy or  
13 collective bargaining agreement provides for the payment of  
14 accrued earned sick leave upon termination, resignation, retirement  
15 or other separation from employment, an employee shall not be  
16 entitled under this section to payment of unused earned sick leave  
17 upon the separation from employment.

18 e. Any information an employer possesses regarding the health  
19 of an employee or any family member of the employee or domestic  
20 or sexual violence affecting an employee or employee's family  
21 member shall be treated as confidential and not disclosed except to  
22 the affected employee or with the written permission of the affected  
23 employee.

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

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

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

47 d. Any violator of the provisions of this section shall be subject  
48 to relevant penalties and remedies provided by the "New Jersey



1 State Wage and Hour Law,” P.L.1966, c.113 (C.34:11-56a et seq.),  
2 including the penalties and remedies provided by section 25 of that  
3 act (C.34:11-56a24), and relevant penalties and remedies provided  
4 by section 10 of P.L.1999, c.90 (C.2C:40A-2), for discharge or  
5 other discrimination.

6  
7 5. Any failure of an employer to make available or pay earned  
8 sick leave as required by this act, or any other violation of this act,  
9 shall be regarded as a failure to meet the wage payment  
10 requirements of the “New Jersey State Wage and Hour Law,”  
11 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,  
12 as the case may be, and remedies, penalties, and other measures  
13 provided by that act, R.S.34:11-58, and section 10 of P.L.1999, c.90  
14 (C.2C:40A-2) for failure to pay wages or other violations of that act  
15 shall be applicable, including, but not limited to, penalties provided  
16 pursuant to sections 23 and 25 of that act (C.34:11-56a22 and  
17 34:11-56a24), and civil actions by employees pursuant to section 26  
18 of that act (C.34:11-56a25), except that an award to an employee in  
19 a civil act shall include, in addition to the amount provided pursuant  
20 to section 26 of that act (C.34:11-56a25), any actual damages  
21 suffered by the employee as the result of the violation plus an equal  
22 amount of liquidated damages.

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

40  
41 7. a. Employers shall provide notification, in a form issued by  
42 the commissioner, to employees of their rights under this act,  
43 including the amount of earned sick leave to which they are entitled  
44 and the terms of its use, and remedies provided by this act to  
45 employees if an employer fails to provide the required benefits or  
46 retaliates against employees exercising their rights under this act.  
47 Each covered employer shall conspicuously post the notification in  
48 a place or places accessible to all employees in each of the

1 employer's workplaces. The employer shall also provide each  
2 employee employed by the employer with a written copy of the  
3 notification: not later than 30 days after the form of the notification  
4 is issued; at the time of the employee's hiring, if the employee is  
5 hired after the issuance; and at any time, when first requested by the  
6 employee. The commissioner shall make the notifications available  
7 in English, in Spanish, and any other language that the  
8 commissioner determines is the first language of a significant  
9 number of workers in the State and the employer shall use the  
10 notification in English, Spanish or any other language for which the  
11 commissioner has provided notifications and which is the first  
12 language of a majority of the employer's workforce.

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

18

19 8. a. The governing body of a county or municipality shall  
20 not, after the effective date of this act, adopt any ordinance,  
21 resolution, law, rule, or regulation regarding earned sick leave. The  
22 provisions of this act shall preempt any ordinance, resolution, law,  
23 rule, or regulation regarding earned sick leave adopted by the  
24 governing body of a county or municipality.

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

27 (1) requiring an employer to reduce, or justifying an employer  
28 in reducing, rights or benefits provided by the employer pursuant to  
29 an employer policy or collective bargaining agreement which are  
30 more favorable to employees than those required by this act or  
31 which provide rights or benefits to employees not covered by this  
32 act;

33 (2) preventing or prohibiting the employer from agreeing,  
34 through a collective bargaining agreement or employer policy, to  
35 provide rights or benefits which are more favorable to employees  
36 than those required by this act or to provide rights or benefits to  
37 employees not covered by this act;

38 (3) prohibiting an employer from establishing a policy whereby  
39 an employee may donate unused accrued earned sick leave to  
40 another employee or other employees; or

41 (4) superseding any law providing collective bargaining rights  
42 for employees, or in any way reducing, diminishing, or adversely  
43 affecting those collective bargaining rights, or in any way reducing,  
44 diminishing, or affecting the obligations of employers under those  
45 laws.

46 Employees or employee representatives may waive the rights or  
47 benefits provided under this act during the negotiation of a  
48 collective bargaining agreement.

1 c. With respect to employees covered by a collective  
2 bargaining agreement in effect at the time of the effective date of  
3 this act, no provision of this act shall apply until the stated  
4 expiration of the collective bargaining agreement.

5  
6 9. The provisions of this act shall be deemed to be severable  
7 and if any section, subsection, paragraph, sentence or other part of  
8 this act is declared to be unconstitutional, or the applicability  
9 thereof to any person is held invalid, the remainder of this act shall  
10 not thereby be deemed to be unconstitutional or invalid.

11  
12 10. The commissioner shall develop and implement a  
13 multilingual outreach program to inform employees, parents, and  
14 persons under the care of health care providers about the  
15 availability of earned paid sick leave pursuant to this act. The  
16 program shall include the distribution of written materials in  
17 English, Spanish and any language that is the primary language of  
18 10 percent or more of the registered voters in the State to all child  
19 care and elder care providers, domestic violence shelters, schools,  
20 hospitals, community health centers and other healthcare providers.  
21 The commissioner shall, during each calendar year, allocate not less  
22 than \$500,000 to the program, which shall be regarded as a cost of  
23 administration of temporary disability and family temporary  
24 disability benefits and be charged to the administration account of  
25 State disability benefit fund, except that the allocation made  
26 pursuant to this subsection shall not result in the total amount  
27 credited to administrative costs exceeding the maximum amount  
28 permitted pursuant to subsection (a) of section 22 of P.L.1948,  
29 c.110 (C.43:21-46).

30  
31 11. The commissioner shall adopt rules and regulations  
32 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
33 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

34  
35 12. This act shall take effect on the 180th day next following  
36 enactment.