

Questions Answered About New Jersey's Paid Sick Leave Law

October 31, 2018

Effective October 29, 2018, the New Jersey Sick Leave Law requires employers to allow employees to accrue 1 hour of earned sick leave for every 30 hours work, up to 40 hours each year. The law permits employers to create policies that provide additional leave time. [Here is a link to the law from the State of New Jersey Department of Labor and Workforce Development website.](#)

Since we originally posted about the [Paid Sick Leave Law](#), we've received a number of questions about how the Sick Leave Law will impact various employers. Here are some FAQs that we've received. Have a question that we didn't cover? Let us know.

Q: When does the law go into effect? **A:** October 29, 2018.

Q: Is there an **exception for small businesses**? **A:** No. All employers are required to provide their employees with earned sick time.

Q: Are there any **regulations** for this new law? **A:** The Department of Labor and Workforce Development proposed new regulations in September. A public hearing will be held on the proposed new rules will be held on November 13, 2018. Written comments must be submitted by December 14, 2018.

Q: Some of our employees work **part-time**. Do they earn the same amount of sick time as full-time employees? **A:** All employees, regardless of full-time or part-time status, earns 1 hour of paid sick leave for every 30 hours that they work.

Q: Our employees live in New Jersey but our **office is not located in New Jersey**. Do we have to comply with the new paid sick leave law? **A:** No. The paid sick leave only applies to employees working in New Jersey.

Q: Do we need to offer paid sick leave to the **independent contractors** that work for us? **A:** According to the new law, all "employees" must be allowed to earn paid sick leave. The law defines "employee" as "an individual engaged in service to an employer in the business of the employer for compensation."

However, the proposed regulations suggest that the "ABC Test" found in N.J.S.A. 43:21-19(i)(6)(A), (B), and (C) be used to determine whether an individual is an employee or an independent contractor under the new paid sick leave law.

Q: We employ **per diem health care workers**. Are they exempt from coverage? **A:** It depends. The new law covers "employees" and the definition of "employee" "does not include . . . a per diem health care employee." A "per diem health care employee" means: (1) health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey

Department of Health; (2) any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; of (3) any first aid, rescue or ambulance squad member employed by a hospital system.

Additionally, a “per diem health care employee” “shall not include any individual who is certified as a homemaker-home health aide.” This means homemaker-home health aides are considered “employees” under the NJ Paid Sick Leave law and must be covered, even if they are per diem employees.

Q: Our employees earn money based on **commission or tips**. How will do we pay them for their paid sick leave days? **A:** The law states that employees must be paid for earned sick leave at the same rate of pay with the same benefits as the employee normally earns, “except that the pay rate shall not be less than the minimum wage required for the employee pursuant to section 5 of P.L.1966, c.113.”

The new proposed regulations suggest that “where an employee is paid by commission, whether base wage plus commission or commission only, the employer must pay the employee during earned sick leave an hourly rate that is the base wage or the State minimum wage rate, whichever is greater. . . . When an employee is paid on a piecework basis, . . . to calculate the employee’s rate of pay for earned sick leave, the employer shall add together the employee’s total earnings for the seven most recent workdays when the employee did not take leave and divide that sum by the number of hours the employee spent performing the work during workdays.”