

## **Newark, New Jersey, Passes Law Requiring Paid Sick Leave**

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On January 28, 2014, the City Council of Newark, New Jersey, passed Ordinance 13-2010 (“Ordinance”), making Newark the second city in New Jersey, after [Jersey City](#), to mandate paid sick leave. The Ordinance requires private employers conducting business in Newark with 10 or more employees in Newark to provide employees with 40 hours of paid sick leave annually. Private employers conducting business in Newark with fewer than 10 employees in Newark must provide 24 hours of paid sick leave annually. Child care workers, home health care workers, and food service workers, however, must be given up to 40 hours of paid sick time, regardless of the size of the employer. The Ordinance takes effect on May 29, 2014, and provides employees with time off to attend to their own health care, as well as the health care of family members.

The Ordinance defines the term “employer” by reference to *N.J.S.A. 34:11-56a1(g)* (i.e., the definition in New Jersey’s wage and hour law) to include “any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.” “Employee” is defined to include any individual employed by an employer, franchise, or business owner located in Newark who works at least 80 hours a year in the city, but excludes government workers, employees covered by the terms of a collective bargaining agreement (to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms), and employees of Rutgers University (Newark Campus). The Ordinance defines “family member” broadly to include a child, stepchild, child of a domestic partner, grandchild, parent, or grandparent of the employee or of his or her spouse, domestic partner, or civil union partner.

Employees accumulate sick leave at a rate of one hour of paid sick time for each 30 hours worked, up to a maximum of 24 or 40 hours (depending on the size of the employer), beginning as of an employee’s first day of work. Employees are not, however, entitled to use accrued time until their 90th day of employment. Up to 40 hours of accrued, unused sick leave will carry over to the following calendar year, but employers are not required to allow employees to use more than 40 hours of accrued sick leave in any given year. Employees are not entitled to reimbursement for accrued, unused sick leave upon separation from the employer. If, however, an employee

becomes reemployed by the employer within six months of the termination of his or her employment, the employee is entitled to reinstatement of unused sick time that was accrued at the time of the separation, and prior employment will be counted towards meeting the 90-day requirement. Additionally, an employer with a paid leave policy (e.g., sick days, vacation, and paid time off (“PTO”)) that provides an amount of leave sufficient to meet the requirements of the Ordinance is not required to provide additional paid sick leave. Nothing in the Ordinance prohibits employers from offering a more generous paid sick time policy.

Other aspects of the Ordinance include the following:

- Employers are prohibited from interfering with, restraining or denying the exercise of, or the attempt to exercise, any right protected under the Ordinance.
- Employers are also prohibited from retaliating against employees for exercising their rights under the Ordinance.
- Employers may not require an employee to find a replacement worker to cover the hours during which the employee will be absent.
- For sick leave of more than three consecutive days, employers are permitted to request reasonable documentation to support the leave request, including documentation signed by a health care professional indicating that the leave is necessary. (Such documentation is to be maintained confidentially, unless disclosure is to the affected employee or with his or her permission.)

The Ordinance also imposes notice, poster, and recordkeeping obligations on the employer. For instance, employers must provide new hires and existing employees (as soon as practicable) with written notice of their rights under the Ordinance and display in a conspicuous location a poster regarding sick leave benefits. The notice is required to be provided in English and the primary language spoken by an employee, so long as the primary language of the employee is also the primary language of at least 10 percent of the employer’s workforce. The form of the notice and poster will be provided by the Newark Department of Child and Family Well-Being (“Department”), but is not yet available. The Department is also empowered to audit employers and review and adjudicate complaints. Violations carry fines up to \$1,000, imprisonment not exceeding 90 days, and/or a period of community service not exceeding 90 days. Any employer that is found to have violated the Ordinance will also be subject to payment of restitution in the amount of any paid sick time unlawfully withheld. The Department also may publicize online and in other media the names of employers that violate the Ordinance. Of note, the Ordinance creates a private cause of action for aggrieved employees.

### **What Employers Should Do Now**

- Review leave and anti-retaliation policies to ensure that they comply with at least the minimum requirements of the Ordinance.

- If current leave or anti-retaliation policies do not meet the Ordinance's requirements, modify the policies before the Ordinance takes effect.
- Watch for the publication by the Department of the notice to be distributed and the poster to be displayed to employees beginning in May 2014.
- Determine the primary language spoken by at least 10 percent of your workforce.
- Determine which employees are covered by the Ordinance and ensure that they receive the required notice and that the required poster is displayed in a conspicuous place as of May 29, 2014.
- Ensure that time, payroll, and benefits systems properly track, calculate, and sufficiently show the hours worked and sick time taken by employees.
- Train managers and human resource personnel about the Ordinance and its non-retaliation provisions.

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