

[First Reprint]

**SENATE, No. 799**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Co-Sponsored by:**

**Senators Codey, Rice, Cunningham, Lesniak, Sarlo, Gill and Stack**

**SYNOPSIS**

Concerns earned sick leave.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 7, 2016, with amendments.



**(Sponsorship Updated As Of: 2/12/2016)**

1 AN ACT mandating certain employers provide earned sick leave to  
2 employees.

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, if the child is less than 19 years of  
25 age, or is 19 years of age or older but incapable of self-care because  
26 of mental or physical impairment.

27 "Civil union" means a civil union as defined in section 2 of  
28 P.L.2006, c.103 (C.37:1-29).

29 "Commissioner" means the Commissioner of Labor and  
30 Workforce Development.

31 "Department" means the Department of Labor and Workforce  
32 Development.

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

40 "Domestic partner" means a domestic partner as defined in  
41 section 3 of P.L.2003, c.246 (C.26:8A-3).

42 "Domestic or sexual violence" means stalking, any sexually  
43 violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted March 7, 2016.

1 27.26), or domestic violence as defined in section 3 of P.L.1991,  
2 c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

3 "Employee" means an individual engaged in service to an  
4 employer in the business of the employer for compensation.  
5 "Employee" does not include an employee performing service in the  
6 construction industry that is under contract pursuant to a collective  
7 bargaining agreement.

8 "Employer" means any person, firm, business, educational  
9 institution, nonprofit agency, corporation, limited liability company  
10 or other entity that employs employees in the State.

11 "Family member" means a child, grandchild, sibling, spouse,  
12 domestic partner, civil union partner, parent, or grandparent of an  
13 employee, or a spouse, domestic partner, or civil union partner of a  
14 parent or grandparent of the employee, or a sibling of a spouse,  
15 domestic partner, or civil union partner of the employee.

16 "Health care professional" means any person licensed under  
17 federal, State, or local law, or the laws of a foreign nation, to  
18 provide health care services, or any other person who has been  
19 authorized to provide health care by a licensed health care  
20 professional, including but not limited to doctors, nurses and  
21 emergency room personnel.

22 "Parent" means a biological, adoptive, or foster parent,  
23 stepparent, or legal guardian of an employee or of the employee's  
24 spouse, domestic partner, or civil union partner, or a person who  
25 stood in loco parentis of the employee or the employee's spouse,  
26 domestic partner, or civil union partner when the employee, spouse  
27 or partner was a minor child.

28 "Retaliatory personnel action" means denial of any right  
29 guaranteed under this act and any threat, constructive discharge,  
30 suspension, demotion, unfavorable reassignment, refusal to  
31 promote, disciplinary action, sanction, or any other adverse action  
32 against an employee.

33 "Sibling" means a biological, foster, or adopted sibling of an  
34 employee.

35 "Small employer" means an employer who had, on average,  
36 fewer than 10 employees during the preceding calendar year, or  
37 during the current year if the employer had no employees during the  
38 preceding calendar year. Periods of time in which the employer had  
39 no employees shall not be considered in determining the average  
40 number of employees. In determining whether an employer is a  
41 small employer, the number of employees shall include all  
42 individuals working for compensation on a full-time, part-time or  
43 temporary basis, including individuals made available to work at a  
44 workplace of the employer through a temporary help services firm.

45 "Spouse" means a husband or wife.

46

47 2. a. Each employer shall provide earned sick leave to each  
48 employee working for the employer in the State. For every 30 hours

1 worked, the employee shall accrue one hour of earned sick leave,  
2 except that an employer may provide an employee with the full  
3 complement of earned sick leave for a benefit year, as required  
4 under this section, on the first day of each benefit year in  
5 accordance with subsection c. or subsection d. of section 3 of this  
6 act. The employer shall not be required to permit the employee to  
7 accrue at any one time, or carry forward from one benefit year to  
8 the next, more than 40 hours of earned sick leave if the employer is  
9 a small employer, or more than 72 hours of earned sick leave if the  
10 employer is not a small employer. Unless the employee has accrued  
11 earned sick leave prior to the effective date of this act, the earned  
12 sick leave shall begin to accrue on the effective date of this act for  
13 any employee hired before the effective date of this act and the  
14 employee shall be eligible to use the earned sick leave beginning on  
15 the 100th calendar day after the hiring of the employee, and if hired  
16 after the effective date of this act, the earned sick leave shall begin  
17 to accrue upon the date of hire and the employee shall be eligible to  
18 use the earned sick leave beginning on the 100th calendar day after  
19 the hiring of the employee, unless the employer agrees to an earlier  
20 date. The employee may use earned sick leave as it is accrued.

21 b. An employer shall be in compliance with this section if the  
22 employer offers any other fully paid leave that may be used for the  
23 purposes of section 3 of this act in the manner provided by this act,  
24 and is accrued at a rate equal to or greater than the rate described in  
25 this section.

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

31 d. Upon the mutual consent of the employee and employer, an  
32 employee may voluntarily choose to work additional hours or shifts  
33 during the same or following pay period, in lieu of hours or shifts  
34 missed, but shall not be required to use accrued earned sick leave.  
35 An employer may not require, as a condition of an employee's using  
36 earned sick leave, that the employee search for or find a  
37 replacement worker to cover the hours during which the employee  
38 is using earned sick leave.

39 e. If an employee is transferred to a separate division, entity, or  
40 location, but remains employed by the same employer, then the  
41 employee shall be entitled to all earned sick leave accrued at the  
42 prior division, entity, or location, and shall be entitled to use the  
43 accrued earned sick leave as provided in this act. If an employee is  
44 terminated, laid off, furloughed, or otherwise separated from  
45 employment with the employer, any unused accrued earned sick  
46 leave shall be reinstated upon the re-hiring or reinstatement of the  
47 employee to that employment, within six months of termination,  
48 being laid off or furloughed, or separation, and prior employment

1 with the employer shall be counted towards meeting the eligibility  
2 requirements set forth in this section.

3

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

6 (1) Time needed for diagnosis, care, or treatment of, or recovery  
7 from, an employee's mental or physical illness, injury or other  
8 adverse health condition, or for preventive medical care for the  
9 employee;

10 (2) Time needed for the employee to aid or care for a family  
11 member of the employee during diagnosis, care, or treatment of, or  
12 recovery from, the family member's mental or physical illness,  
13 injury or other adverse health condition, or during preventive  
14 medical care for the family member;

15 (3) Absence necessary due to circumstances resulting from the  
16 employee, or a family member of the employee, being a victim of  
17 domestic or sexual violence, if the leave is to allow the employee to  
18 obtain for the employee or the family member: medical attention  
19 needed to recover from physical or psychological injury or  
20 disability caused by domestic or sexual violence; services from a  
21 designated domestic violence agency or other victim services  
22 organization; psychological or other counseling; relocation; or legal  
23 services, including obtaining a restraining order or preparing for, or  
24 participating in, any civil or criminal legal proceeding related to the  
25 domestic or sexual violence; or

26 (4) Time during which the employee is not able to work because  
27 of a closure of the employee's workplace, or the school or place of  
28 care of a child of the employee, by order of a public official due to  
29 an epidemic or other public health emergency, or because of the  
30 issuance by a public health authority of a determination that the  
31 presence in the community of the employee, or a member of the  
32 employee's family in need of care by the employee, would  
33 jeopardize the health of others.

34 b. If an employee's need to use earned sick leave is foreseeable,  
35 an employer may require advance notice, not to exceed seven  
36 calendar days prior to the date the leave is to begin, of the intention  
37 to use the leave and its expected duration, and shall make a  
38 reasonable effort to schedule the use of earned sick leave in a  
39 manner that does not unduly disrupt the operations of the employer.  
40 If the reason for the leave is not foreseeable, an employer may  
41 require an employee to give notice of the intention as soon as  
42 practicable. For earned sick leave of three or more consecutive  
43 days, an employer may require reasonable documentation that the  
44 leave is being taken for the purpose permitted under subsection a. of  
45 this section. If the leave is permitted under paragraph (1) or (2) of  
46 subsection a. of this section, documentation signed by a health care  
47 professional who is treating the employee or the family member of  
48 the employee indicating the need for the leave and, if possible,

1 number of days of leave, shall be considered reasonable  
2 documentation. If the leave is permitted under paragraph (3) of  
3 subsection a. of this section because of domestic or sexual violence,  
4 any of the following shall be considered reasonable documentation  
5 of the domestic or sexual violence: medical documentation; a law  
6 enforcement agency record or report; a court order; documentation  
7 that the perpetrator of the domestic or sexual violence has been  
8 convicted of a domestic or sexual violence offense; certification  
9 from a certified Domestic Violence Specialist or a representative of  
10 a designated domestic violence agency or other victim services  
11 organization; or other documentation or certification provided by a  
12 social worker, counselor, member of the clergy, shelter worker,  
13 health care professional, attorney, or other professional who has  
14 assisted the employee or family member in dealing with the  
15 domestic or sexual violence. If the leave is permitted under  
16 paragraph (4) of subsection a. of this section, a copy of the order of  
17 the public official or the determination by the health authority shall  
18 be considered reasonable documentation. An employer who chooses  
19 to require documentation for earned sick leave shall pay all out-of-  
20 pocket expenses the employee incurs to obtain the documentation.

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

44 d. If an employer foregoes the accrual process for earned sick  
45 leave hours pursuant to subsection a. of section 2 of this act and  
46 provides an employee with the full complement of earned sick leave  
47 for a benefit year on the first day of each benefit year, then the  
48 employer shall either provide to the employee a payment for the full

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

13 e. Any information an employer possesses regarding the health  
14 of an employee or any family member of the employee or domestic  
15 or sexual violence affecting an employee or employee's family  
16 member shall be treated as confidential and not disclosed except to  
17 the affected employee or with the written permission of the affected  
18 employee.

19

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

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

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

42 d. Any violator of the provisions of this section shall be subject  
43 to relevant <sup>1</sup>administrative<sup>1</sup> penalties <sup>1</sup>and remedies<sup>1</sup> provided by  
44 the "New Jersey State Wage and Hour Law," P.L.1966, c.113  
45 (C.34:11-56a et seq.), including the <sup>1</sup>administrative<sup>1</sup> penalties <sup>1</sup>and  
46 remedies<sup>1</sup> provided by section 25 of that act (C.34:11-56a24) for  
47 discharge or other discrimination.

1       5. Any failure of an employer to make available or pay earned  
2 sick leave as required by this act, or any other violation of this act,  
3 shall be regarded as a failure to meet the wage payment  
4 requirements of the “New Jersey State Wage and Hour Law,”  
5 P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act,  
6 as the case may be, and <sup>1</sup>【all remedies,】 administrative<sup>1</sup> penalties  
7 <sup>1</sup>【or other measures】<sup>1</sup> provided by that act for failure to pay wages  
8 or other violations of that act shall be applicable, including, but not  
9 limited to, <sup>1</sup>administrative<sup>1</sup> penalties provided pursuant to sections  
10 23 and 25 of that act (C.34:11-56a22 and 34:11-56a24), and civil  
11 actions by employees pursuant to section 26 of that act (C.34:11-  
12 56a25), except that an award to an employee in a civil act shall  
13 include, in addition to the amount provided pursuant to section 26  
14 of that act (C.34:11-56a25), any actual damages suffered by the  
15 employee as the result of the violation plus an equal amount of  
16 liquidated damages.

17

18       6. Employers shall retain records documenting hours worked  
19 by employees and earned sick leave taken by employees, for a  
20 period of five years, and shall, upon demand, allow the department  
21 access to those records to monitor compliance with the  
22 requirements of this act. If an employee makes a claim that the  
23 employer has failed to provide earned sick leave required by this act  
24 and the employer has not maintained or retained adequate records  
25 documenting hours worked by the employee and earned sick leave  
26 taken by the employee or does not allow the department access to  
27 the records, it shall be presumed that the employer has failed to  
28 provide the earned sick leave, absent clear and convincing evidence  
29 otherwise. In addition, the <sup>1</sup>administrative<sup>1</sup> penalties provided by  
30 the “New Jersey State Wage and Hour Law,” P.L.1966, c.113  
31 (C.34:11-56a et seq.) for violations of the requirements of that act  
32 regarding the maintaining and disclosure of records shall apply to  
33 violations of the requirements of this section.

34

35       7. a. Employers shall provide notification, in a form issued by  
36 the commissioner, to employees of their rights under this act,  
37 including the amount of earned sick leave to which they are entitled  
38 and the terms of its use, and remedies provided by this act to  
39 employees if an employer fails to provide the required benefits or  
40 retaliates against employees exercising their rights under this act.  
41 Each covered employer shall conspicuously post the notification in  
42 a place or places accessible to all employees in each of the  
43 employer's workplaces. The employer shall also provide each  
44 employee employed by the employer with a written copy of the  
45 notification: not later than 30 days after the form of the notification  
46 is issued; at the time of the employee's hiring, if the employee is  
47 hired after the issuance; and at any time, when first requested by the  
48 employee. The commissioner shall make the notifications available



1 in English, in Spanish, and any other language that the  
2 commissioner determines is the first language of a significant  
3 number of workers in the State and the employer shall use the  
4 notification in English, Spanish or any other language for which the  
5 commissioner has provided notifications and which is the first  
6 language of a majority of the employer's workforce.

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

12

13 8. a. The governing body of a county or municipality shall not,  
14 after the effective date of this act, adopt any ordinance, resolution,  
15 law, rule, or regulation regarding earned sick leave. The provisions  
16 of this act shall preempt any ordinance, resolution, law, rule, or  
17 regulation regarding earned sick leave unless adopted by the  
18 governing body of a county or municipality prior to the effective  
19 date of this act. This act shall not be construed to preempt, limit, or  
20 otherwise affect the applicability of any provision of an ordinance,  
21 resolution, law, rule, or regulation regarding earned sick leave  
22 adopted by a county or municipality prior to the effective date of  
23 this act that provides rights or benefits to employees which are  
24 more favorable to employees than those required by this act or that  
25 provides rights or benefits to employees not covered by this act, but  
26 shall preempt any provision which is less favorable to employees  
27 than is required by this act.

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

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

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

41 (3) Prohibiting an employer from establishing a policy whereby  
42 an employee may donate unused accrued earned sick leave to  
43 another employee or other employees; or

44 (4) Superseding any law providing collective bargaining rights  
45 for employees, or in any way reducing, diminishing, or adversely  
46 affecting those collective bargaining rights, or in any way reducing,  
47 diminishing, or affecting the obligations of employers under those  
48 laws.

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 expiration of  
4 the collective bargaining agreement.

5 d. A public employer shall not be subject of the provisions of  
6 this act with respect to its employees if the employer is subject to  
7 the provisions of any State statute or regulation regarding earned  
8 sick leave which are more favorable to those employees than the  
9 provisions of this act.

10

11 9. The commissioner shall adopt rules and regulations pursuant  
12 to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-  
13 1 et seq.) to effectuate the purposes of this act.

14

15 10. This act shall take effect on the 120th day following  
16 enactment.