

# Management Alert



## If Pain, Yes Gain - Part II: Newark Passes Paid Sick Time Ordinance

Following the lead set by Jersey City, on January 28, 2014, the Newark Municipal Council passed the "Sick Leave for Private Employees" Ordinance, which, if signed into law by Newark Mayor Luis Quintana, would make it the seventh city in the United States to enact a mandatory paid sick leave law.

The ordinance requires employers with 10 or more Newark-based employees to provide up to five days of paid sick leave per year, while employers with fewer than 10 employees need only provide up to three days of paid sick leave per year. Notably, employers with a paid leave policy, such as PTO, equal to or more generous than the ordinance's requirements need not offer additional leave to employees, provided that time can be used under the same conditions. The ordinance becomes effective 140 days after the signed version of the ordinance is published in the Newark newspaper, *The Star Ledger*, except when dealing with employees covered by a collective bargaining agreement, in which case the ordinance becomes effective upon the termination of such agreement. We will be sure to update you as soon as the dates become clear.

The Newark ordinance is the second of its kind in the State of New Jersey. On January 24, 2014, Jersey City's paid sick time ordinance went into effect. (For more information regarding the Jersey City Paid Sick Time Ordinance, click [here](#) and [here](#).)

Before the ordinance takes effect, employers with operations in Newark will need to ensure that their policies are compliant. This alert explains what is required of employers and answers some of the main concerns facing affected employers.

### How Much Sick Leave Must be Provided?

As noted above and like its Jersey City counterpart, private employers with 10 or more Newark-based employees, must provide a minimum of one hour of paid sick time for every 30 hours worked by the employee, up to a maximum of 40 hours (i.e. 5 calendar days) of sick leave per year. However, unlike Jersey City, Newark employers with child care, home health care, and food service workers must provide 40 hours of paid sick time to these workers, even if the employer has only one Newark employee. Further deviating from Jersey City, private employers with fewer than 10 Newark employees are also obligated to provide a minimum of one hour of paid sick time for every 30 hours worked by the employee, although the total number of hours employers must provide annually caps at 24 hours (i.e. 3 calendar days).

For all employers, a person is deemed an "employee" under the law if he or she is a full-time, part-time, or temporary employee who works in Newark for at least 80 hours per year. In terms of sick time accrual for exempt employees, the ordinance treats them as if they work 40 hours per week, unless their normal work week is less than 40 hours, in which case sick time accumulates based on that normal work week.

## How Do Employees Use Sick Time?

Employees begin to accrue paid sick time on their first day of employment, or when the ordinance goes into effect for existing employees, and can begin using accrued sick time starting on the 90th day following the start of his or her employment, or on the 90th day following the effective date of the ordinance for existing employees.

In terms of accrued, but unused paid sick time, the Newark ordinance is largely identical to that of Jersey City. For instance, under both laws, if an employee does not use all of his or her accrued sick time within a given calendar year, up to 40 hours of sick leave will carry over to the following calendar year, however, employers are still not required to provide more than 40 sick leave hours in any single year. Therefore, employees in both cities are not permitted to stockpile sick leave hours from year to year. The one difference between the two laws on this topic is that Newark employers can refuse to carry over an employee's accrued, but unused paid sick time if they pay the employee for any unused time at the end of the calendar year. This payment is purely at the employer's discretion. Employers remain free simply to allow a carry over.

When an employee's employment relationship ends, whether by termination, resignation, retirement, or otherwise, the employer has no obligation to reimburse the employee for accrued, but unused sick time. However, if an employee is rehired within six months of separation, the employee is entitled to reinstatement of his or her previously unused accrued sick time.

## Under What Circumstances May Employees Use Sick Time?

Under the ordinance, an employee can take sick leave for any of the following reasons:

- An Employee's mental or physical illness, injury, or health condition; an Employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; an Employee's need for preventive medical care;
- Care of a Family Member<sup>1</sup> with a mental or physical illness, injury, or health condition; care of a Family Member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a Family Member who needs preventive medical care;
- Closure of the Employee's place of business by order of a public official due to a public health emergency or an Employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for Family Member when it has been determined by the health authorities having jurisdiction or by a health care provider that the Family Member's presence in the community would jeopardize the health of others because of the Family Member's exposure to a communicable disease, whether or not the Family Member has actually contracted the communicable disease.

## What Employers Can and Can't Do

Under the Newark ordinance employers are permitted to a) loan paid sick time to an employee before he or she actually accrues that time, b) request that an employee confirm that his or her paid sick time was used for an authorized purpose (see above), c) require up to 7 days advance notice of the employee's intention to use paid sick time when the employee's need is foreseeable, d) determine whether paid sick time can be used in increments of less than one day, and e) require an employee who has taken sick leave for more than three consecutive days to provide reasonable documentation that the time has been used for a permissible purpose.

Under the Newark ordinance employers cannot a) interfere with, restrain, or retaliate against an employee for exercising his or her rights under the ordinance, require an employee to b) search for or find a replacement worker, or c) disclose details relating to the employee's or the employee's family member's medical condition as conditions of providing paid sick time

<sup>1</sup> Under the ordinance "Family Member" includes a) children, b) parents, c) spouses (under either marriage or civil unions under N.J.S.A. Title 37), d) grandparents, e) grandchildren, f) domestic partners, and g) siblings.

## What Happens if I Violate the Ordinance?

Either the Newark Department of Child and Family Well-Being (“Department”) and/or the aggrieved employee can file a complaint in the Newark Municipal Court. Employers who violate the ordinance are subject to a) a fine of up to \$1,000 for each day of noncompliance, and b) payment of restitution in the amount of any unlawfully withheld paid sick time.

## What Should Employers Do Now?

**Policy Review:** Employers with operations in Newark should review their sick leave policies immediately to ensure that they meet at least the minimum requirements of the Sick Leave for Private Employees Ordinance before the ordinance becomes effective.

**Notice and Posting:** When the ordinance goes into effect, Employers must (1) provide individual written notice to employees and (2) display a poster regarding employees’ right to sick time in “a conspicuous and accessible place” in each business establishment where employees are employed. Individual written notice must be given to employees at the commencement of their employment or as soon as practicable if the employee is already employed.

Both the poster and notice must be in English and in the primary language spoken by the employee if that language is also the primary language of at least 10 percent of the employer’s work force. In addition, the notice and poster must describe the right to paid sick time, the accrual rate and amount of paid sick time, the terms of use under the ordinance, the right to be free from retaliation for requesting use of paid sick time, and the right to file a complaint regarding a violation of the law.

The Department can, and likely will, create and distribute model notices and posters in the coming months. We will be sure to advise you in the event that such notices become available.

**Record Retention:** Employers must maintain and retain adequate records documenting both the hours worked by employees and sick time taken by employees so such information can be reviewed by the Department.<sup>2</sup>

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<sup>2</sup> Failure to comply with this requirement creates a rebuttable presumption that the employer has violated the ordinance.

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**Seyfarth Shaw LLP Management Alert | February 6, 2014**

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