

Management Alert



If Pain, Yes Gain—Part XLV: New Jersey Revives Statewide Paid Sick Leave Efforts

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Seyfarth Synopsis: Earlier this week, the New Jersey Assembly passed a bill that would impose statewide paid sick leave obligations on private employers. While the bill still must be approved by the New Jersey Senate and signed by the state Governor, after years of unfulfilled sick leave efforts, the state with the greatest number of municipal paid sick leave ordinances could soon be home to the country's tenth statewide paid sick leave law.

For several years, New Jersey has examined the [possibility](#) of providing paid sick leave benefits to employees across the state. However, the combination of former Governor Chris Christie's anti-paid sick leave stance and disagreements on key points between the New Jersey Senate and Assembly has immunized New Jersey from joining the ranks of nine other states that have passed statewide paid sick leave laws.¹ This prognosis could soon change. Despite previous unsuccessful efforts, New Jersey has resuscitated its statewide paid sick leave push and, with Governor Phil Murphy at the helm, there is a strong chance the Garden State will soon pass the country's tenth paid sick leave law.

On March 26, 2018, the New Jersey Assembly passed Bill A1827 (the "Bill" or "Assembly Bill") that would require employers to provide employees in New Jersey with paid sick leave. The Bill, which according to its terms would take effect on the 180th day following enactment, will also need to be approved by the state Senate and signed by Governor Murphy before becoming law. While A1827 makes its way to the New Jersey Senate, the state Senate has introduced its own paid sick leave bill—Bill S2171 (the "Senate Bill").

Notably, the Senate Bill is not identical to the Assembly Bill. As a result, assuming the state Senate passes the Senate Bill and not the Assembly Bill, any differences would need to be reconciled before a bill is sent to Governor Murphy. One significant distinction between the two bills is how they treat preemption of municipal paid sick leave ordinances. Preemption is particularly important for New Jersey employers because the state is home to 13 municipal paid sick leave ordinances—the most of any state in the country.²

Under the Assembly Bill, all existing and future municipal ordinances would be preempted by the state law. However, under the Senate Bill, the 13 existing municipal ordinances would not be affected by the state law (i.e., they would remain in effect), although new ordinances would be preempted. Any forthcoming New Jersey paid sick leave law that does not preempt the state's existing municipal sick leave ordinances would create compliance challenges for employers as it would be adding to, rather than resolving the existing patchwork.

¹ The nine states that have passed a statewide mandatory paid sick leave law are: (1) [Connecticut](#); (2) [California](#); (3) [Massachusetts](#); (4) [Oregon](#); (5) [Vermont](#); (6) [Arizona](#); (7) [Washington](#); (8) [Rhode Island](#); and (9) [Maryland](#). The Rhode Island governor signed the state's paid sick leave law on September 28, 2017 and it is scheduled to go into effect on July 1, 2018. The Washington statewide paid sick leave law went into effect on January 1, 2018. The Maryland statewide paid sick leave law went into effect on February 11, 2018. The other six statewide laws are in effect.

² The New Jersey municipalities with current paid sick leave ordinances are: (1) Newark; (2) Passaic; (3) East Orange; (4) Paterson; (5) Irvington; (6) Montclair; (7) Trenton; (8) Bloomfield; (9) Jersey City; (10) Morristown; (11) Plainfield; (12) Elizabeth, and (13) New Brunswick

As we continue to monitor New Jersey's sick leave status, here are some highlights of the Assembly Bill:

- **Employee Eligibility:** Employee is defined broadly and means "any individual engaged in service to an employer in the business of the employer for compensation." The Assembly Bill excludes certain employees in the construction industry who are under a collective bargaining agreement, certain per diem health care employees, and certain public employees.
- **Covered Employer:** Employer is also broadly defined and includes persons or entities that employ employees in New Jersey.
- **Accrual, Usage and Carryover Caps:** All employees working for an employer in New Jersey are entitled to accrue one hour of sick leave for every 30 hours worked, up to 40 hours per year. An employer is not required to permit employees to use more than 40 hours of sick leave in any benefit year or carry over more than 40 hours of unused sick leave at year-end.
- **Frontloading:** While an employer may frontload an employee with the full amount of earned sick leave on the first day of each benefit year to avoid the accrual process, it does not appear that the Assembly Bill would allow employers with a frontloading system to adopt a "use it or lose it" approach for unused sick leave at the end of the year. The Assembly Bill states that if the employer chooses to frontload sick leave, it must either **(1)** pay the employee for the full amount of unused earned sick leave in the final month of the benefit year; or **(2)** permit the employee to carry over unused sick leave to the next benefit year.
- **Reasons for Use:** An employee must be permitted to use earned sick leave for absences for any of the following reasons:
 - For diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition or for preventive medical care for the employee;
 - For the employee to aid or care for a covered family member during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or adverse health condition, or during preventive medical care for the family member;
 - Certain absences resulting from the employee or a covered family member's status as a victim of domestic or sexual violence;
 - Closures of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family member in need of care by the employee, would jeopardize the health of others;
 - For time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function, or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.
- **Family Member:** Covered family member includes: **(1)** child; **(2)** grandchild; **(3)** sibling; **(4)** spouse; **(5)** domestic partner; **(6)** civil union partner; **(7)** parent; **(8)** grandparent; **(9)** spouse, domestic partner, or civil union partner of a parent or grandparent of the employee; **(10)** a sibling of a spouse, domestic partner, or civil union partner of the employee; or **(11)** any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

Employers with employees in New Jersey should closely monitor whether the state ultimately passes a statewide paid sick leave law and what impact, if any, the law has on existing and future municipal sick leave ordinances.

As the paid sick leave landscape continues to expand, companies should reach out to their Seyfarth contact for solutions and recommendations on addressing compliance with this law and sick leave requirements generally. To stay up-to-date on Paid Sick Leave developments, [click here](#) to sign up for Seyfarth's Paid Sick Leave mailing list.

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