

Management Alert



If Pain, Yes Gain—Part XXII: Morristown No. 13 in New Jersey to Pass Paid Sick Leave Law

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Seyfarth Synopsis: Following the path of 12 other New Jersey municipalities, on September 13, 2016, the Morristown, NJ, Town Council passed a mandatory paid sick leave ordinance (the “Morristown Ordinance”). The ordinance becomes effective on October 4, 2016¹ and improves New Jersey’s standing as the state with the most municipal paid sick leave laws in the country – the total now at 13 municipalities.²

The Morristown Ordinance substantially tracks the requirements of sick leave laws passed in many other New Jersey municipalities. For instance, the Morristown Ordinance requires private employers with 10 or more employees to provide up to 40 hours of paid sick time per year, while smaller private employers need only provide up to 24 hours of paid sick time per year. Employers with a paid leave policy, such as PTO, that is equal to or more generous than the Morristown Ordinance, and which allows paid leave to be used for the same purposes and under the same conditions as the Morristown Ordinance, are not required to offer additional leave.

How Much Sick Time Must Be Provided?

Employees begin accruing paid sick time on their first day of employment at a rate of one hour for every 30 hours worked by an employee, up to an annual cap of either 40 or 24 hours depending on the size of the employer.³ Exempt employees under the Fair Labor Standards Act are assumed to work 40 hours each week, or their normal workweek if fewer than 40 hours, for purposes of paid sick time accrual. An employer’s size is measured by counting all employees performing work for compensation on a full-time, part-time, or temporary basis. It is unclear if this determination is based on overall workforce size or only the company’s workforce in Morristown.

For all employers, an employee is deemed eligible for paid sick time if he or she works in Morristown for at least 80 hours per year.⁴ Individuals employed by a government entity or who are members of construction unions and covered by a collective bargaining agreement (“CBA”) are not covered. Importantly, the Morristown Ordinance will not apply to employees covered

¹ The Morristown Ordinance states that it becomes effective “upon passage and publication in accordance with applicable law.” Morristown representatives have indicated that this occurs 20 days after the Ordinance is signed by Morristown Mayor Timothy Dougherty, which took place on September 14, 2016.

² The other New Jersey municipalities that have enacted or approved paid sick leave laws are: (1) Newark; (2) Passaic; (3) East Orange; (4) Paterson; (5) Irvington; (6) Montclair; (7) Trenton; (8) Bloomfield; (9) Jersey City; (10) Elizabeth; (11) New Brunswick; and (12) Plainfield. Here are links to our prior alerts on paid sick leave requirements in [New Brunswick](#), [Jersey City](#), [Elizabeth](#), [Newark](#), [Passaic](#), and [Trenton](#).

³ There is an exception for child care workers, home health care workers, and food service workers, such that employers are required to provide them up to 40 hours of paid sick time, regardless of the employer’s size.

⁴ “Calendar year” is defined as “a regular and consecutive 12 month period, as determined by an employer.”

by a CBA where such requirements are expressly waived in the CBA in clear and unambiguous terms. For employees currently covered by a CBA, the Ordinance's terms will not apply until that CBA expires.

How Do Employees Use Sick Time?

Employees can begin using accrued paid sick time starting on the 90th day following the start of their employment, and thereafter as it accrues. The Morristown Ordinance is silent on whether this 90-day usage waiting period applies to employees who work for the employer on the Ordinance's effective date. Given the ambiguity, employers likely should take a conservative approach and treat the 90-day usage waiting period as only applying to employees hired after the Morristown Ordinance's effective date. Employees can use paid sick time in the smaller of either hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

Employees are entitled to carry over up to 40 hours of accrued, unused paid sick time from one year to the next. However, regardless of carryover balances, employers are not required to allow employees to use more than 40 hours of paid sick time per year. Notably, employers are not required to carry over accrued, unused paid sick time if the employee is paid for any unused sick time at the end of the year in which the time was accrued.

Under What Circumstances May Employees Use Sick Time?

Employees may use accrued paid sick time for the following reasons: (a) medical diagnosis, care or treatment of the employee's or a covered family member's mental or physical illness, injury or health condition, or need for preventive care; (b) where the employee's place of business, or the employee's child's school or daycare center has been closed due to a public health emergency, or (c) care for a family member whose presence in the community would jeopardize the health of others due to the family member's exposure to a communicable disease.

Family member includes an employee's (1) child;⁵ (2) parent;⁶ (3) spouse, domestic partner, or civil union partner; (4) grandparent; (5) grandparent's spouse, civil union partner or domestic partner; (6) grandchild; and (7) sibling.

What Employers Can and Cannot Do

Verification of Need for Sick Time: Employers can request, following the use of paid sick time, that an employee confirm in writing that the time was used for an authorized purpose under the Morristown Ordinance. Employers also may require employees to submit reasonable documentation that the paid sick time was used for a permitted purpose where the employee has used paid sick time for three consecutive days or three consecutive instances. While employers may require a medical professional's note for this purpose, they cannot require that the documentation explain the nature of the illness.

Confidentiality and Nondisclosure: An employer may not require disclosure of the specific details of an employee or the employee's family member's medical condition as a condition of providing paid sick time, and must generally treat any such health information as confidential.

Employee Notice of Need for Sick Time: If the need for leave is foreseeable, employers may require employees to provide notice up to seven days prior to the date of the leave. Where the need is unforeseeable, however, the employer may require notification prior to the start of the workday or shift, except in emergencies where the employer can only require that notice be provided as soon as practicable.

⁵ Includes a biological, adopted or foster child, stepchild or legal ward, child of a domestic partner or civil union partner, or child to whom the employee stands in loco parentis.

⁶ Includes a biological, foster, stepparent or adoptive parent or legal guardian of an employee or of an employee's spouse, domestic partner or civil union partner, or a person who stood in loco parentis when the employee was a minor child.

Interference and Retaliation: Employers shall not interfere with, restrain, or deny an employee's exercise of, or attempt to exercise, any rights under the Morristown Ordinance. Employers also cannot retaliate against an employee for exercising his or her rights under the Ordinance.

Separation of Employment: Upon separation of employment, an employer is not required to "cash out" an employee's accrued, unused paid sick time. An employer is obligated to reinstate any accrued, unused sick time if the employee is rehired within six (6) months of separation.

What Happens If I Violate the Ordinance?

Employees may file complaints against an employer with the Morristown Department of Administration (the "Department"), or Morristown Municipal Court. Employers found to be in violation may be subject to a fine of up to \$2,000, in addition to restitution of any unpaid sick time unlawfully withheld.

What Should Employers Do Now?

Businesses with operations in Morristown should take steps now to ensure that they achieve full compliance with the new law prior to its quickly approaching October 4, 2016 effective date. To this end, employers must be aware of the Morristown Ordinance's notice, posting, and record retention requirements.

Notice and Posting: Employers must give employees notice of certain rights under the Morristown Ordinance at the commencement of their employment or, for current employees, as soon as practicable after the Ordinance becomes effective. Additionally, a poster of those same rights must be displayed in a conspicuous and accessible place in each of the employer's establishments where eligible employees work. The poster must be in English and any language that is the first language of at least 10% of the employer's workforce. The Department can, and likely will, create a model notice and/or poster in the near future. We will be sure to advise you in the event that such notices become available.

Record Retention: Employers must allow the Department to have reasonable access to records and to monitor compliance with the requirements of the Morristown Ordinance. Failure to maintain records documenting hours worked and paid sick time taken by an employee will create a rebuttable presumption that the employer is violating the Morristown Ordinance, absent "clear and convincing evidence" of compliance. While the Morristown Ordinance is silent on how long employers must maintain these records, best practice suggests that employers retain the required records for at least four years as that is the most generous standard expressly stated in existing state and local paid sick leave laws.

If you would like further information, please contact your Seyfarth attorney, [Christopher Lowe](mailto:clowe@seyfarth.com) at clowe@seyfarth.com, [Joshua D. Seidman](mailto:jseidman@seyfarth.com) at jseidman@seyfarth.com, or Needhy Shah at nesah@seyfarth.com.

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Seyfarth Shaw LLP Management Alert | September 21, 2016

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