



# **New Jersey Temporary Workers' Bill and its Impact on the Staffing Industry**

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**Seyfarth Shaw LLP**

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# Speakers

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## A Bit of History

- New Jersey has regulated temporary help service firms, in one way or another, since 1893
- Municipal regulation of employment agencies became mandatory in 1907. This legislation required the licensing of all employment agencies and criminalized the furnishing of employment-agency services without a license, "whether such business is conducted in a building or on the street or elsewhere."
- The New Jersey Commission of Immigration was not thrilled with municipal municipalities' enforcement, so they transferred responsibility to state agencies.
- In 1951, the Legislature adopted the Private Employment Agency Act, which incorporated much of the prior legislation.
- On February 6, 2023, New Jersey enacts the Temporary Worker Bill of Rights.



***[The Temporary Worker Bill of Rights] is a bill that is limited to scope in terms of temporary workers to those folks that are low waged primarily industrial warehouse workers, this is not a bill for those that are viewing this that is your person filling in at the reception desk or the person filling in as an accountant during tax season.”***

**-Sen. Joseph Cryan (D) (primary sponsor) on NJ Spotlight News**





## The Test – Who Is Covered?

A temporary help service firm is any person or entity operating a business who:

- Employs individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm's customers in the handling of the customers' **temporary, excess or special workloads**.
- In addition to the payment of wages or salaries to the employed individuals,
- Pays federal social security taxes and State and federal unemployment insurance;



## The Test – Who Is Covered? (cont'd.)

- Carries workers' compensation insurance as required by State law; and
- Sustains responsibility for the actions of the employed individuals while they render services to the firm's customers.
- The definition dates back decades.
  - See *Data Informatics, Inc. v. AmeriSOURCE Partners*, 338 N.J. Super. 61, 76–78, 768 A.2d 210, 218–20 (App. Div. 2001)

## The Test – Who Is Covered? *(cont'd.)*

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The law **only** applies to those who are placed in a temporary assignment by a temporary help service firm to perform work in one of the following occupational categories as designated by the Bureau of Labor Statistics of the United States Department of Labor:

- 33-9000 Other Protective Service Workers;
- 35-0000 Food Preparation and Serving Related Occupations;
- 37-0000 Building and Grounds Cleaning and Maintenance Occupations;
- 39-0000 Personal Care and Service Occupations;
- 47-2060 Construction Laborers;
- 47-30000 Helpers, Construction Trades;
- 49-0000 Installation, Maintenance, and Repair Occupations;
- 51-0000 Production Occupations;
- 53-0000 Transportation and Material Moving Occupations

**Each Classification Has Subclassifications**



## The Test – Who Is Covered? *(cont'd.)*

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- 33-9010 Animal Control Workers
  - 33-9011 Animal Control Workers
- 33-9020 Private Detectives and Investigators
  - 33-9021 Private Detectives and Investigators
- 33-9030 Security Guards and Gambling Surveillance Officers
  - 33-9031 Gambling Surveillance Officers and Gambling Investigators
  - 33-9032 Security Guards
- 33-9090 Miscellaneous Protective Service Workers
  - 33-9091 Crossing Guards and Flaggers
  - 33-9092 Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers
  - 33-9093 Transportation Security Screeners
  - 33-9094 School Bus Monitors
  - 33-9099 Protective Service Workers, All Other

## The Test – Who Is Covered? (cont'd.)

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  - 33-9099 Protective Service Workers, All Other

# The Test – Who Is Covered? (cont'd.)

## What the Law Says

reasons. <sup>2</sup>“Designated classification placement” means an assignment of a temporary laborer by a temporary help service firm to perform work in any of the following occupational categories as designated by the Bureau of Labor Statistics of the United States Department of Labor: 33-90000 Other Protective Service Workers; 35-0000 Food Preparation and Serving Related Occupations; 37-0000 Building and Grounds Cleaning and Maintenance Occupations; 39-0000 Personal Care and Service Occupations; 47-2060 Construction Laborers; 47-30000 Helpers, Construction Trades; 49-0000 Installation, Maintenance, and Repair Occupations; 51-0000 Production Occupations; 53-0000 Transportation and Material Moving Occupations; or any successor categories as the Bureau of Labor Statistics may designate.<sup>2</sup>

## What the SOC Cautions Against

- **Not Built For This**: The SOC was designed solely for statistical purposes.
  - Cautions against use in *any* administrative, regulatory, or tax program.
  - Under the SOC system, workers are classified into occupations based on their *job duties*, not their *job titles*.
  - When workers in a single job could be coded in more than one occupation, they should be coded in the occupation that requires the highest level of skill (alternatively, the most time)
- **It is Intentionally Vague**: If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate “All Other” occupation. When workers in a single job could be coded in more than one occupation, they should be coded in the occupation that requires the highest level of skill. If there is no measurable difference in skill requirements, workers should be coded in the occupation in which they spend the most time.



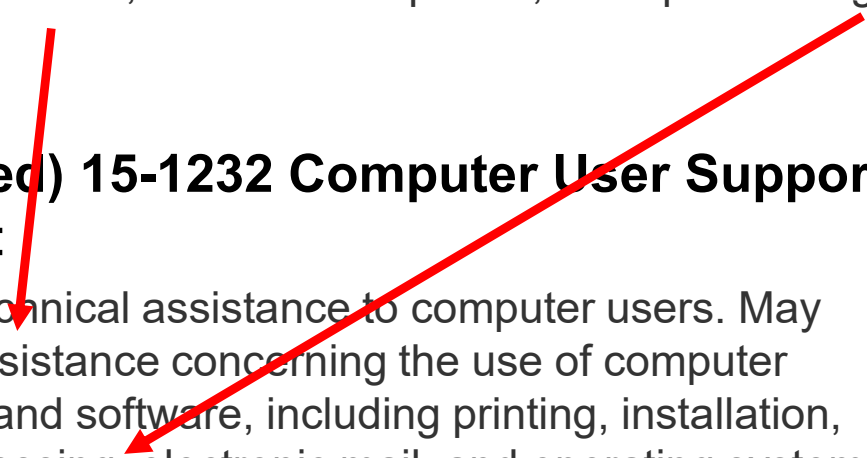
# STANDARD OCCUPATIONAL CLASSIFICATION MANUAL

United States, 2018

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

285 Pages!

## Context Driven Analysis

- Example: IT Worker
  - **(Covered) 49-2011 Computer, Automated Teller, and Office Machine Repairers:**
    - Repair, *maintain*, or install computers, word processing systems.
  - **(Not Covered) 15-1232 Computer User Support Specialists:**
    - Provide technical assistance to computer users. May provide assistance concerning the use of computer hardware and software, including printing, installation, word processing, electronic mail, and operating systems.
- 

**The Test – Who  
Is Covered?  
(cont'd.)**

# Occupational Employment and Wage Statistics

<a href="#">OEWS Home</a>	<a href="#">OEWS Publications</a> ▾	<a href="#">OEWS Data</a> ▾	<a href="#">OEWS Methods</a> ▾
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## Occupational Employment and Wages, May 2022

### 33-9099 Protective Service Workers, All Other

All protective service workers not listed separately.

- [National estimates for Protective Service Workers, All Other](#)
- [Industry profile for Protective Service Workers, All Other](#)
- [Geographic profile for Protective Service Workers, All Other](#)

**Issues with Scope: A Law Like “All Other(s)”**

## Who is in?

- Security Guards
- Hairdressers, Hairstylists, and Cosmetologists
- Drivers/Sales Workers
- Cooks
- Dishwashers
- Construction Trades
- Bakers
- Butchers
- Machinists
- Welders

vs.

## Who is out (For Now)?

- Secretaries and Administrative Assistants
- Data Entry and Information Processing Workers
- Computer User Support Specialists
- Software Developers
- Librarians
- Financial Clerks





## Notice Provision

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Whenever a temporary help service firm agrees to send a person to work as a temporary laborer in a designated classification placement, the temporary help service firm shall provide the temporary laborer, at the time of dispatch, a statement, in writing in English and in the language identified by the employee as the employee's primary language, containing the following items on a form approved by the commissioner, in a manner appropriate to whether the assignment is accepted at the temporary help service firm's office, or remotely by telephone, text, email, or other electronic exchange.

## Notice of Provision (cont'd.)

- The name of the temporary laborer
- The name, address and telephone number of
  - the temporary help service firm, or the contact information of the firm's agent facilitating the placement;
  - it's workers' compensation carrier;
  - the worksite employer or third-party client; and
  - the Department of Labor and Workforce Development
- The name and nature of the work to be performed as well as a description of the position and whether it will require specialized training/equipment



## Notice of Provision (cont'd.)

- The wages offered
- The name and address of the assigned worksite
- The terms of transportation/meals offered to the temporary laborer, if applicable, and cost of the same
- Length of Assignment
- Amount of Sick Leave





**BIG QUESTION**

**Does a temporary help service firm dispatching a laborer in a designated classification need to give notice for New York based clients?**

**BIG ANSWER**

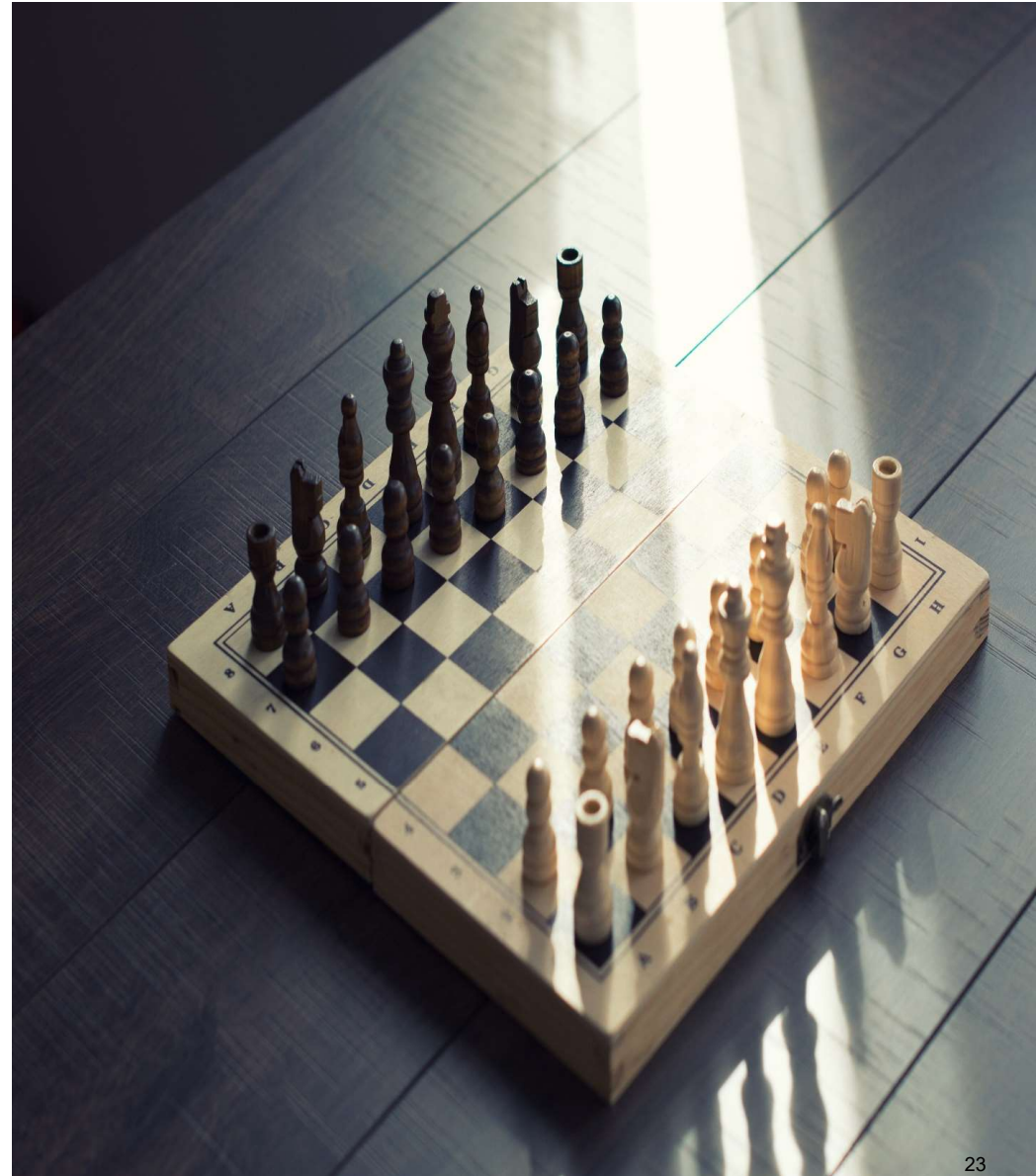


# BIG QUESTION



**Is New Jersey Taking the Stance the Recordkeeping Provisions Applicable to Third-Party Clients Are Enforceable Against New York Based Employers?**

**Unclear, but it would raise a host of issues, some of which are being litigated now.**





## New Jersey FAQs

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- Temporary Help Service Firms must comply with all of the requirements of the new law with regard to the temporary laborer who is assigned to work for a third-party client in New York.
- The new law applies to a temporary help service firm, because it is located, operates, or transacts business within New Jersey.
- The requirements of the new law are triggered at various stages of the relationship between a temporary help service firm and the temporary laborer, without regard to the state in which the temporary laborer is assigned to perform the work.





## New Jersey FAQs (cont'd.)

- The notice provision states that “[w]henever a temporary help service firm agrees to send a person to work as a temporary laborer in a designated classification placement, the temporary help service firm shall provide the temporary laborer, at the time of dispatch, a statement...containing the following items on a form approved by the Commissioner...”
- The law does **not** say, “whenever a temporary help service firm agrees to send a person to work as a temporary laborer *in New Jersey*.” Rather, it says, “whenever a temporary help service firm agrees to send a person to work as a temporary laborer.”

- Prohibited
  - Transportation
  - Background Checks (consumer, criminal, drug testing)
- Permitted\*
  - Meals
  - Equipment
    - Market value
    - Failed to return
    - Need written authorization for deduction at time it is made
- The total amount deducted for meals and equipment shall not cause the hourly wage of a temporary laborer in a designated classification placement to fall below the State or federal minimum wage, whichever is greater.
- Keep your receipts! Recordkeeping provision requires verification of the actual cost of any equipment or meal charged to a temporary laborer

## Deductions

## Pay Equity

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- Any temporary laborer assigned to work at a third party client in a designated classification placement shall not be paid less than the average rate of pay and average cost of benefits, or the cash equivalent thereof, of employees of the third party client performing the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions for the third party client at the time the temporary laborer is assigned to work at the third party client. Any temporary help service firm that violates this section shall be subject to a civil penalty not to exceed \$5,000 for each violation found by the commissioner.

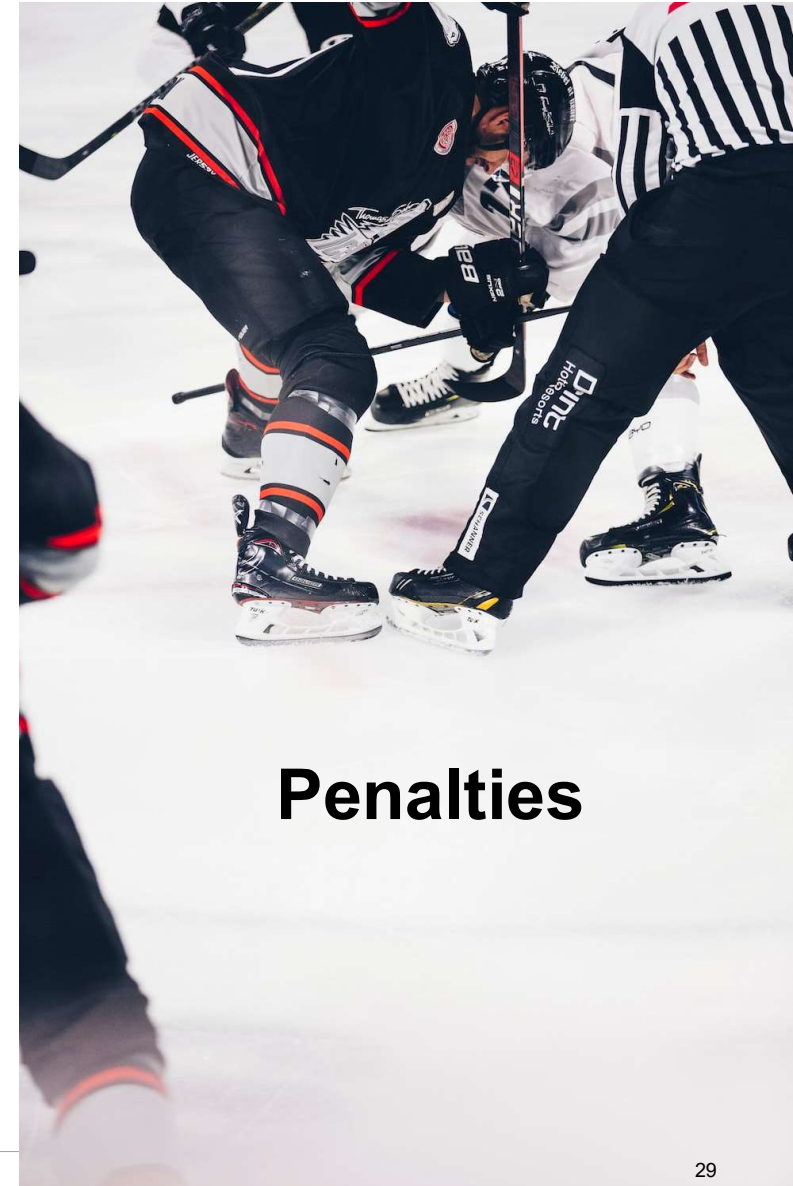
## Pay Equity (Cont.)

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- Performing...
  - the **same** or **substantially similar work**
  - on jobs the performance of which requires
    - **equal** skill,
    - effort, **and**
    - responsibility, **and**
    - which are performed under **similar** working conditions for the third-party client **at the time** the temporary laborer is **assigned** to work at the third-party client.

- **Joint Liability**

- Section 7 includes a joint liability provision. Section 7 covers interference with permanent placements, wage statement requirements, and pay equity provisions.
- “If a **third-party client** leases or contracts with a temporary help service firm for the services of a temporary laborer in a designated classification requirement, the third-party client shall be, with the temporary help service firm, **jointly and severally responsible for any violation of this section.**”
- Important to review contractual provisions and indemnification provisions.
- Review job descriptions and tasks and ensure temporary workers are being paid appropriately.



## Penalties

- **Retaliation**

- Termination by temporary help service firm within 90 days of protected activity raises a rebuttable presumption of having done so in retaliation for exercise of those rights.

- **Penalties**

- Notice

- Subject to a civil penalty of not less than \$500 and not to exceed \$1,000 for each violation found by the commissioner.

- Itemized Statements

- Subject to a civil penalty not to exceed \$500 for each violation found by the commissioner. The maximum civil penalty shall increase to \$2,500 for a second or subsequent violation.

- Third-Party Clients, too!

- Failure by the third-party client to maintain and remit accurate time records under certain provisions may subject the third-party client to a civil penalty not to exceed \$500 for each violation found by the commissioner.



- When do the other provisions go into effect?
  - August 5<sup>th</sup>, 2023
- Do we need to use the State’s notice form?
  - Yes. If the temporary help service firm fails to provide this form, they can face a civil penalty of at least \$500 and up to \$1000 for each violation.
- When will we see regulations?
  - It is unclear.
- What is the status of the pending litigation challenging the constitutionality of the law?
  - There is a pending lawsuit in D.N.J. challenging the law. As of writing, a motion to dismiss has not been filed.



## FAQs

## Do Not Be Fooled

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- There is a lot of incorrect information about the law circulating online. Including on some of the most popular legal search engines...

Temporary Workers Bill of Rights N.J.S.A. 34:8D-1 to 34:8D-13


*Incorrect*

Effective August 2, 2023, the Temporary Workers Bill of Rights (TWBOR) will provide protections for temporary workers in New Jersey (N.J.S.A. 34:8D-1 to 34:8D-13). Under the TWBOR, a temporary help service firm must:



# Do Not Be Fooled

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**The “Temporary Laborer Assignment Notification” form asks separately for both the “name and nature of [the] work to be performed” and a “description of the position.” Aren’t those the same thing?** 

The new law expressly lists each of these two items as separate elements of the required assignment notification form. Thus, we must assume that they are not the same thing. In the Department’s view, the “name and nature of the work” would be a more general characterization of the type of work, whereas a “description of the position” would be a more detailed description of the job, including the duties to be performed. For example, if the assignment is to work as a line cook in a corporate cafeteria, the name and nature of the work might be food preparation, industrial; whereas a description of the position might be line cook in the cafeteria for XYZ Corporation; duties include prep work, cooking on the line, and related activities.

# Benefits Considerations

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- *What's Required?*
  - Staffing agency must provide temp “Equivalent Benefits” of permanent counterpart at client employer
    - Or equivalent cash payment
- *What is “Equivalent Benefits?”*
  - Same category (welfare, retirement, life, disability, etc.)?
  - What about dependent benefits?
  - Same cash value? (If so, how do you calculate?)
  - Nondiscrimination/administration concerns
- *Who is a “Substantially Similar” Permanent Employee?*
- *Does ERISA Preempt?*
  - Likely, no, given the equivalent cash payment alternative

# NJ Earned Sick Leave Law



Legal Requirements	New Jersey Paid Sick Leave
<b>Effective Date</b>	10/29/2018
<b>Employer Coverage</b>	"Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs employees in the State, <b>including a temporary help service firm.</b>
<b>Employee Eligibility Requirements</b>	No express standard. Broad coverage – Although law contains certain exclusions, including for per diem health care EEs.

# NJ Earned Sick Leave Law



Legal Requirements	New Jersey Paid Sick Leave
<b>Start of Accrual</b>	Start of employment.
<b>Accrual Rate</b>	1 hour of sick leave for every 30 hours worked.
<b>Accrual Cap</b>	Maximum of 40 hours of PSL in a benefit year.
<b>Usage Cap</b>	Maximum of 40 hours of PSL in a benefit year.
<b>Usage Waiting Period</b>	Employee can use PSL on the 120th calendar day after the employee commences employment.
<b>Year-End Carryover</b>	<p>Employees generally must be allowed to carryover up to 40 hours of accrued, unused PSL at year-end.</p> <p>Must allow carry over even if employees are provided with a lump sum grant of paid sick leave at the start of the year.</p>

# NJ Earned Sick Leave Law

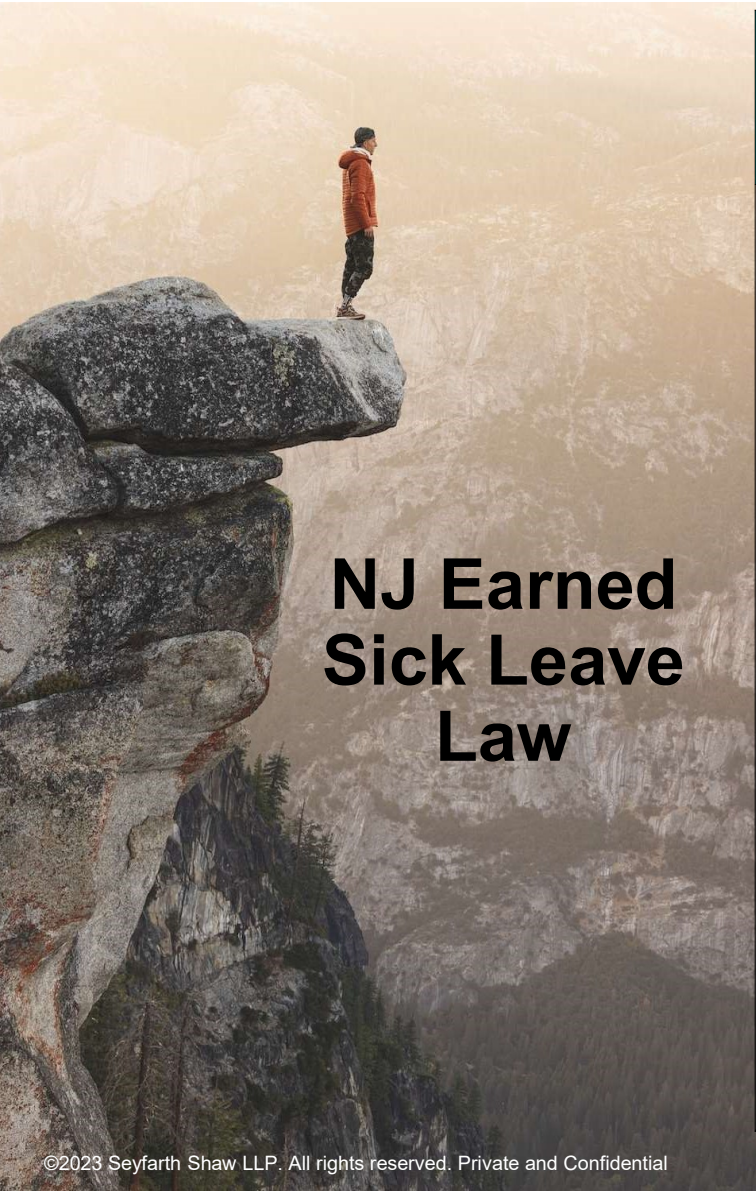


Legal Requirements	New Jersey Paid Sick Leave
<p><b>Reasons for Use</b></p>	<p>(1) Employee’s or family member’s health care needs, including for <i>preventative medical care</i>;            (2) Certain absences relating to employee or family member being a victim of domestic or sexual violence;            (3) Absences related to certain public health emergencies;            (4) Leave to attend a (a) school-related conference, meeting, function or other event requested or required by an individual responsible for the employee’s child’s education, or (b) meeting about care for the child’s health conditions or disability.</p>
<p><b>Covered Family Members</b></p>	<p>(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) sibling of a spouse, domestic partner, or civil union partner of the employee, (11) any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.</p>

# NJ Earned Sick Leave Law



Legal Requirements	New Jersey Paid Sick Leave
<b>Notice</b>	<b>PSL LAW:</b> Employers must provide notification, in a form issued by the commissioner, to employees of their rights under the PSL law, including the amount of earned sick leave to which they are entitled and the terms of its use, and remedies provided by the PSL law to employees if an employer fails to provide the required benefits or retaliates against employees exercising their rights under the PSL law.
	<b>NJ TEMPORARY WORKERS LAW:</b> At the time of dispatch, a temporary help service firm must provide temporary workers with a statement, which amongst other things, includes: <ul style="list-style-type: none"><li>•The amount of sick leave to which temporary workers are entitled under the PSL law and the terms of its use.</li></ul>



# NJ Earned Sick Leave Law

## Legal Requirements

## New Jersey Paid Sick Leave

### Recordkeeping

**PSL LAW:** Employers must maintain (a) hours worked by employees, (b) earned sick leave accrued/advanced to employees, (c) earned sick leave used by employees, (d) compensation paid to employees when using earned sick leave, and (e) earned sick leave paid out and/or carried over by/to employees.

The records must be kept **for a period of 5 years.** in the place of employment or a central office in New Jersey and shall be open to inspection by the Commissioner at any reasonable time.

**NJ TEMPORARY WORKERS LAW:** Employers must maintain a variety of records, including hours worked, rate of pay, and notices provided to employees in accordance with the NJ Temporary Workers Law **for a period of 6 years.**

# Thank You

**For more information please contact**

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