

# Management Alert



## If Pain, Yes Gain: Jersey City Passes Paid Sick Time Ordinance

By Christopher Lowe, Scott Rabe and Joshua D. Seidman

On September 25, 2013, the Jersey City council passed the Paid Sick Time Ordinance, which requires all private sector employers with employees working in Jersey City to provide up to five days of sick leave per year. For those employers with 10 or more Jersey City employees, that sick leave must be paid. 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 circumstances and conditions. The ordinance becomes effective on January 24, 2014, except when dealing with employees covered by a collective bargaining agreement, in which case the ordinance takes effect upon the termination of such agreement.

The Jersey City ordinance is the first of its kind in the State of New Jersey and only the seventh local ordinance passed nationwide, following in the footsteps of New York City, which passed similar, although slightly less restrictive, legislation last June. (For more information regarding the New York City Earned Sick Time Act, click [here](#).)

The ordinance faced stiff opposition, particularly from the New Jersey Business Industry Association, a local business advocacy organization, but passed with approval from Mayor Fulop and a 7-to-1 vote in the City Council.

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

### How Much Sick Leave Must be Provided?

#### Private Sector Employers with 10 or more Jersey City Employees<sup>1</sup>

- Must provide employees a minimum of one hour of **paid** sick leave 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.

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<sup>1</sup> This aspect of the Jersey City ordinance is more restrictive than New York City's, which applies only to employers with 20 or more employees (this number drops to 15 employees 18 months after the law goes into effect).

### **Private Sector Employers with fewer than 10 Jersey City Employees**

- Must provide employees a minimum of one hour of **unpaid** sick leave 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.

For all employers, a person is considered an “employee” under the law if he or she is a full-time, part-time, or temporary employee who works in Jersey City for at least 80 hours per year.

For the purposes 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 will accumulate based on the hours the employee works in a normal week.

### **How Do Employees Use Sick Time?**

An employee begins to accrue sick time at the commencement of employment or on January 24, 2014, 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 (i.e. April 24, 2014).

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 are not permitted to stockpile sick leave hours from year to year.

When an employee’s relationship with an employer ends, whether by termination, resignation, retirement, or otherwise, the employee is not entitled to reimbursement for accrued and 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?**

An employee does not necessarily need to be sick in order to use sick leave. Employees can take sick leave for any of the following reasons:

- An employee’s mental or physical illness, injury, or health condition; or 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 with a mental or physical illness, injury, or health condition; or 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; and
- 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 a 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 ordinance employers are permitted to a) loan sick time to an employee before the employee actually accrues that time, and b) require an employee who has taken sick leave for more than three consecutive days to provide reasonable documentation that time has been used for a permissible purpose (see above).

The ordinance also imposes various restrictions on employers. For instance, employers cannot a) interfere with, restrain, or retaliate against an employee for exercising his or her rights under the ordinance,<sup>2</sup> b) require an employee to search for or find a replacement worker as a condition to taking sick time, c) prevent an employee from using accrued sick time in hourly increments or the smallest amount of time the employer uses to track absences or other time off (i.e. if an employer currently permits employees to take absences or other time off in half-day increments, the employer must allow half-day increments of sick leave as well), d) deny an employee sick time because the employee's corresponding request was made orally, or e) require disclosure of details relating to an employee's or an employee's family member's medical condition as a condition of providing paid sick time.

## What Happens if I Violate the Ordinance?

Aggrieved employees may file a complaint in court or with the Jersey City Department of Health & Human Services. Filing with the Department is neither a prerequisite nor a bar to a private action, however. The maximum penalty for violating the ordinance is a fine of up to \$1,250 and/or a period of community service of up to 90 days for each individual infraction.

## What Should Employers Do Now?

**Policy Review:** Employers with operations in Jersey City should review their sick leave policies immediately to ensure that they meet at least the minimum requirements of the Paid Sick Time Ordinance no later than January 24, 2014.

**Notice and Posting:** Beginning January 24, 2014, Employers must (1) provide individual written notice to employees and (2) display a poster in a conspicuous location in the workplace regarding employees' right to sick time. Notice must be distributed to employees at the commencement of their employment or as soon as practicable if the employee is already employed. The notice and the poster must describe the right to sick time, how sick time is accrued and used, and the employee's rights to be free from retaliation for requesting use of sick time and to bring a complaint regarding a violation of the law. The city's Department of Health and Human Services is in the process of creating individual notices and posters that will be made available to employers. We will be sure to advise you as soon as such notices become available.

Employers that violate the notice and posting requirements are subject to a \$100 civil fine for each employee that was not given notice and \$500 for each location in which the poster was not displayed.

**Record Retention:** Employers are required to retain records documenting both the hours worked by employees and sick time taken by employees for at least three years.

For assistance or questions regarding this or other workplace developments, please contact your Seyfarth attorney with whom you work, or Chris Lowe at [clove@seyfarth.com](mailto:clove@seyfarth.com), Scott Rabe at [srabe@seyfarth.com](mailto:srabe@seyfarth.com), or Joshua D. Seidman at [jseidman@seyfarth.com](mailto:jseidman@seyfarth.com).

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<sup>2</sup> The ordinance creates a rebuttable presumption of unlawful retaliation when an employer takes adverse action against an employee within 90 days of when the employee files a complaint, informs another person about the alleged violation, cooperates in the investigation or prosecution of any alleged violation, opposes any unlawful policy or practice under the ordinance, or informs any person about his or her potential rights under the ordinance.

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