

One Minute Memo®



If Pain, Yes Gain—Part V: Paid Sick Time Heating Up in New Jersey

By Christopher Lowe and Joshua D. Seidman

Jurisdictions across the country have witnessed a growth in municipal mandatory paid sick leave laws over the last year. New Jersey has not only been a part of the movement, but during this time it has seen the most growth in municipal paid sick leave laws compared to any other state in the country.

In October 2013, only one New Jersey municipality, Jersey City, had enacted a mandatory paid sick leave law (for information regarding the Jersey City ordinance, please see our [earlier post](#)). By comparison, today, New Jersey has two municipalities with paid sick leave laws in effect—Jersey City and Newark (please see our [earlier post](#) on the Newark paid sick leave law)—and four additional cities—Passaic, East Orange, Paterson and Irvington—that have enacted paid sick leave laws¹ (for information regarding the Passaic ordinance, please see our [earlier post](#)). The four recently enacted paid sick leave laws have effective dates scheduled for late 2014 or early 2015. We are continuing to monitor these laws and will be sure to notify you as their effective dates approach.

In light of this recent activity, New Jersey is now tied with California and Washington² as the states with two municipalities that have mandatory paid sick leave laws in effect and it is poised to take the lead. In fact, New Jersey now has the most local municipalities—six—that have enacted paid sick leave laws as compared to any other state in the country.

Statewide Paid Sick Leave Coming to New Jersey?

This week has been no exception to New Jersey's intense interest in paid sick leave. On October 27th, contentious bill A2354 was approved by a 6 to 3 vote in the state Assembly Labor Committee. The bill would require all New Jersey employers to provide each employee with one hour of paid sick time for every 30 hours worked by the employee. Employers with fewer than 10 employees would need to allow their employees to accrue at least 40 hours (i.e. five days) of paid sick time per year. The bill's constraints are more severe on larger employers, i.e. those with 10 or more employees, as they would need to allow their employees to accrue at least 72 hours (i.e. nine days) of paid sick time per year.³ Notably, bill A2354's requirements regarding 1) accrual rate of paid sick time and 2) the minimum amount of paid sick time covered employers must allow their employees to accrue annually are equal to or go beyond the comparable conditions in New Jersey's six municipal paid sick leave ordinances.⁴ As such, if bill A2354 is passed, employers in the six municipalities would need to update their sick leave policies in order to comply with the heightened statewide specifications.

The Assembly Labor Committee vote was the first step in an approval process that would eventually see bill A2354 wind up before Gov. Chris Christie. Because the bill needs Gov. Christie's approval before becoming law and he has indicated concerns regarding the legislation, the bill's ultimate future is unclear. However, the recent vote is particularly noteworthy

because, if it is adopted, New Jersey would become just the third state in the country after Connecticut and California to enact a mandatory paid sick leave law. Massachusetts is also in the running to become the third state in the country with statewide mandatory paid sick leave as its voters can approve a paid sick leave ballot question during the November 4, 2014 elections.

Paid Sick Leave on the Ballot

Like Massachusetts, multiple New Jersey cities also have mandatory paid sick leave questions on their ballots that could be approved on November 4th. Specifically, Trenton and Montclair voters will have the opportunity to make their cities the seventh and eighth jurisdictions in the state to impose a paid sick leave requirement on employers.⁵ If the Trenton ballot question obtains enough votes, it would mean that certain employers in three of New Jersey's major cities—Newark, Jersey City, and Trenton—must provide paid sick leave to their workers.

Getting Sick of Paid Sick Leave

Not everyone in New Jersey supports the recent upswing in paid sick leave requirements. In fact, on September 18, 2014, New Jersey Assembly bill 3702 was introduced which, according to the bill's text, would "[p]rohibit[] local governments from requiring private employers to provide paid sick leave." If bill A3702 is enacted, which is far from certain, New Jersey would join at least 11 other states that have anti-mandatory paid sick leave laws.⁶ Employers should also be aware that if bill A3702 is enacted prior to bill A2354 it could be applied retroactively, thereby preempting any local jurisdiction from implementing mandatory paid sick leave ordinances in the future and requiring the six New Jersey cities that have enacted paid sick leave laws to repeal those laws.⁷

[Christopher Lowe](#) is a partner in Seyfarth's New York office [Joshua D. Seidman](#) is an associate in the firm's New York office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Christopher Lowe at clowe@seyfarth.com or Joshua D. Seidman at jseidman@seyfarth.com.

¹The paid sick leave ordinances in these four jurisdictions closely follow their Newark counterpart, the Newark "Sick Leave for Private Employees" Ordinance. The only major substantive difference between the laws is the dollar amount of the fine imposed on employers in the cities for violating the respective ordinances. For instance, employers who violate the Newark and Irvington ordinances can face fines of up to \$1,000 for each day of noncompliance. East Orange's penalties are less severe, imposing a \$500 fine on employers for each day of noncompliance, while Passaic and Paterson's penalties are more severe, imposing a \$2,000 fine on employers for each day of noncompliance.

²The cities of San Francisco and Long Beach, CA, and Seattle and SeaTac, WA have mandatory paid sick leave ordinances that are currently in effect.

³The 72-hour accrual requirement is tied for the largest such burden imposed on employers in any jurisdiction around the country that has a mandatory paid sick leave law. Only San Francisco and Seattle have a similar requirement.

⁴In all six municipalities, private employers with 10 or more employees must provide a minimum of one hour of paid sick time for every 30 hours worked by the employee, up to at least 40 hours (i.e. 5 calendar days) of sick leave per year. In addition, Newark, Passaic, East Orange, Paterson and Irvington employers with fewer than 10 employees are 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 is reduced to at least 24 hours (i.e. 3 calendar days). By comparison, Jersey City employers with fewer than 10 employees are required to provide a minimum of one hour of unpaid sick time for every 30 hours worked by the employee, up to at least 40 hours per year.

⁵Oakland, CA also has a mandatory paid sick leave question on its ballot that could be approved by voters on November 4th.

⁶The states include: 1) Georgia (pre-2010); 2) Wisconsin (2011); 3) Louisiana (2012); 4) North Carolina (2013); 5) Tennessee (2013); 6) Mississippi (2013); 7) Kansas (2013); 8) Arizona (2013); 9) Indiana (2013); 10) Florida (2013); and 11) Oklahoma (2014).

⁷Notably, in 2011 Wisconsin's state preemption law was applied retroactively. In 2008, the city of Milwaukee, WI enacted a mandatory paid sick leave law. See *Milwaukee, Wis. Ordinance 080420* (Nov. 12, 2008). Despite withstanding the state government's initial efforts to block the law, see *Metro. Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee*, 798 N.W.2d 287, 294 (Wis. Ct. App. 2011), a May 2011 state statute ultimately preempted the city law, thereby forcing city legislators to repeal its paid sick leave law. See WIS. STAT. ANN. § 103.10.

www.seyfarth.com

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP One Minute Memo® | October 31, 2014

©2014 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.