

Elizabeth, New Jersey, Ordinance Requires Private Sector Employers to Provide Paid Sick Leave

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Elizabeth, New Jersey, joins a growing number of municipalities in the Garden State to enact a City Ordinance mandating that all private employers in the city provide their employees with paid sick time. Ordinance No. 4617 will take effect on March 2, 2016, or at the expiration of current collective bargaining agreements for employees working under CBAs.

Covered Employers

All employers employing at least 10 employees in Elizabeth must provide paid sick time to any employee who works at least 80 hours in a year in the city. All employees performing work for compensation are entitled to paid sick time under the Ordinance.

Ineligible employees are:

1. those employed by governmental entities or instrumentalities, including any New Jersey school district or Board of Education; and
2. those who are members of a construction union and are covered by a collective bargaining agreement negotiated by that union.

Benefits

Beginning on their first day of employment, eligible employees begin to accrue one hour of paid sick time for every 30 hours worked, up to 40 hours in a calendar year.

Employees who work for an employer who employs fewer than 10 employees accrue up to a maximum of 24 hours of paid sick time per calendar year. However, employees who are child care workers, home health care workers, or food service workers may accrue up to 40 hours of paid sick time per calendar year, regardless of the size of their employer.

A calendar year is defined as “a regular and consecutive 12-month period, as determined by an employer.”

Employees may not use accrued paid sick time until the 90th calendar day of their employment. After their 90th day, employees may use their paid sick time as it accrues. Employers, however, may permit employees to use their paid sick time *prior* to accrual.

Any accrued, but unused, paid sick time (up to 40 hours) can be carried over to the following calendar year, but no employee may enjoy more than 40 hours of paid sick time in any given calendar year.

If an employee was compensated for unused paid sick time in the previous calendar year, his or her employer is not required to carry the time over to the following year. Employers also are not required to compensate employees for any unused paid sick time at the cessation of their employment.

Permitted Uses

Upon an employee's oral request, which must be provided to the employer as soon as possible, accrued paid sick time can be used for the following reasons:

- An employee's mental or physical illness, injury, or health condition;
- 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;

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- Care of a family member with a mental or physical illness, injury, or health condition;
- 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;
- Closure of the employee's place of business by order of a public official due to a public health emergency;
- 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;
- 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.

Other Obligations

Notice: Employers must provide each employee with a written notice detailing his or her rights under the Ordinance at the commencement of employment, or as soon as practicable if the employee is employed on or after the date the Ordinance becomes effective (i.e., March 2, 2016).

Posting: Employers must display a poster containing notice of the Ordinance in a "conspicuous and accessible place in each business establishment where Employees are employed." The poster must be in English and any language that is the first language of at least 10 percent of the employer's workforce — provided the Elizabeth Department of Health and Human Services ("DHHS") makes such translation available. The DHHS can create these notices and make them available to employers.

Recordkeeping: Employers must allow the DHHS reasonable access to records documenting hours worked by an employee and paid sick time taken and to monitor compliance with the Ordinance. Failure to maintain or retain such records creates a rebuttable presumption that the employer violated the Ordinance.

Prohibited Conduct

Employers are prohibited from:

- Interfering with, restraining, or denying any right protected under the Ordinance; and
- Retaliating against any employee who attempts to exercise his or her rights under the Ordinance.

Violation

If an employee believes his or her employer has violated the Ordinance, he or she may bring a cause of action in the Municipal Court of Elizabeth or submit a complaint to DHHS. A complaint with the DHHS is not a prerequisite to filing a complaint in court.

Employers deemed to be in violation of the Ordinance are subject to maximum fine of up to \$1,250 for each day a violation occurs.

Paid Sick Time Policy

If an employer already has a paid sick time policy that provides paid leave sufficient to meet the total annual accrual requirements under the Ordinance, and employees can use such time for the same purposes and under the same conditions as stated under the Ordinance, the employer is not required to provide additional paid sick time.

Implementation

Employers with an existing paid time off policy should review the policy to ensure it provides at least the same amount of sick time as required by the Ordinance. Employers also should review, and, if necessary, revise the policy to ensure employees may take such time off for the same reasons and under the same conditions as required by the Ordinance.

Employers with no current paid sick time policy should adopt a policy that is compliant with the Ordinance and should consider including the policy in any handbook or manual provided to employees, or distribute the policy separately to all employees employed in Elizabeth.

Additionally, all employers who employ individuals in Elizabeth should obtain a copy of the poster and notice once it is prepared by the DHHS and ensure the notice is posted in each of its establishments and distributed to all of their employees in Elizabeth.

Other Leave-Related Statutes

If an employee qualifies for sick leave time pursuant to the Ordinance as well the Family and Medical Leave Act ("FMLA") and the New Jersey Family Leave Act ("NJFLA"), there is no prohibition against having the leave time run concurrently.

Additionally, the Ordinance prohibits employers from requiring an employee to provide documentation to explain the nature of the illness. The FMLA and NJFLA, however, allow employers to require employees to submit a medical certification to support their request for leave, which may include information prohibited by the Ordinance. While employers may not be able to prohibit employees from using accrued paid sick time for failure to submit documentation, employees still need to satisfy certain obligations under the FMLA and NJFLA to qualify for job-protected leave under those laws. Employers must be cognizant of the interplay between the Ordinance and federal and state leave laws.

Jackson Lewis attorneys are experienced in dealing with the issues in the Ordinance and are available to assist employers in their compliance efforts. If you have questions about this Ordinance or any other workplace issues, please contact the Jackson Lewis attorney with whom you regularly work.

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