

LABOR & EMPLOYMENT

ALERT

NEWARK IS ONE STEP CLOSER TO REQUIRING EMPLOYERS TO PROVIDE SICK LEAVE

By Christina A. Stoneburner

On January 28, 2014, the Newark New Jersey City Council approved an ordinance requiring Newark employers to provide eligible employees with sick leave. The ordinance has not yet been signed by Mayor Luis Quintana, but it is expected that he will sign it shortly.

When the Newark Sick Leave Ordinance is signed, Newark will be the second municipality in New Jersey requiring employers to provide sick leave. In 2013, Jersey City passed a similar ordinance that requires employers to provide unpaid or paid sick leave depending on the size of the employer as of January 24, 2014. New York City also passed a sick leave ordinance similar to Jersey City's law that will go into effect on April 1, 2014.

Unlike the Jersey City and New York City laws, the Newark ordinance would require all employers in Newark to provide paid sick leave to eligible employees. Here is a summary of the key provisions of the Ordinance:

Who is a covered employer?

All private employers with one or more employees.

Who is an employee?

Any person who works 80 or more hours per calendar year in Newark, regardless of whether permanently scheduled in Newark or working part- or full-time or temporary status.

Is sick time paid or unpaid?

All employers must provide paid sick leave regardless of size. The size of the employer is relevant to how much paid leave must be provided.

When can sick time be used?

- An employee's own health condition, including doctor's appointments to diagnose or care for an illness.
- Care of a family member's health condition, including doctor's appointments to diagnose or care for an illness.
- Closure of the workplace by a public health official or due to a public health emergency or if the employee's child's school or place of care has been closed due to a public health emergency or if the employee's family member has been placed under quarantine.

Who is a family member?

- Biological, adopted, foster, step child or legal ward, child of a domestic or civil union partner, or a child to whom the employee stands *in loco parentis*.
- Biological, foster, step-parent, adoptive parent, legal guardian of the employee or the employee's spouse, domestic partner, civil union partner or person who stood *in loco parentis* when the employee was a minor child.
- Spouse or domestic or civil union partner

- Grandparent or spouse, civil union partner or domestic partner of grandparent
- Grandchild
- Sibling

What if the employer already provides paid leave?

If the employer's time off policies allow for the same amount of paid leave required under the law and it can be used for the same reasons and under the same conditions, then the employer does not have to tack on extra paid leave to comply with the law.

How does sick time accrue?

- For employers with 10 or more employees:
 - One hour of sick time for every 30 hours worked, up to a maximum of 40 hours per calendar year.
- For employers with less than 10 employees:
 - One hour of sick time for every 30 hours worked, up to a maximum of 24 hours per calendar year, except employees who are child care workers, home health care workers and food service workers must be able to accrue up to 40 hours in a calendar year.
- Accrual of sick time starts on the first day of employment, but employees cannot use the sick time until after the 90th day of employment.
- Sick time must be carried over each year up to a maximum of 40 hours unless the employer pays employees for unused sick time at the end of each calendar year.
- No employer is required to allow employees to use more than 40 hours per calendar year.
- If the employee is transferred by the employer to a different facility outside of Newark, he or she keeps any accrued sick time even if the other facilities' employees do not receive paid sick leave.
- If the employee is terminated and rehired within six months, any accrued sick time must be reinstated and any time previously worked is counted towards the 90-day requirement before sick time can be used.
- If an employer is a "successor" employer, employees keep all sick leave accrued under the previous employer.
- An employer may choose but is not required to advance sick time.

What are employees' obligations and notice requirements?

- Oral notice will suffice.
- "Reasonable" notice is required. If the need for leave is foreseeable, employers can set notice requirements but such period cannot be more than seven days prior to the need for leave.
- Employer can ask for written confirmation that an employee used sick time in accordance with the ordinance.
- If the employee's absence is more than three consecutive days, employers may require documentation from health care provider saying sick time is necessary but the documentation cannot require disclosure of the nature of illness.

How can sick time be taken?

- The employer may decide if paid sick time can be taken in less than full-day increments.
- Employee cannot be made to find "coverage" for shifts missed.

What does this mean for employees covered by collective bargaining agreements?

- The ordinance will not apply to any employees covered by a CBA in effect at the time of the effective date of the ordinance and will only apply to those employees upon the expiration of that CBA.
- CBAs can expressly waive all or a portion of the requirements of the ordinance.

What notice must be given by employers?

- Written notice by the employer of this law is required to be given at start of employment (or the effective date of the law for existing employees). The notice must include the right to sick time, the total sick time available, the accrual rate of sick time, the right to be free from retaliation and the right to file a complaint in Newark Municipal Court. The notice must be in English and the primary language of the employee if such language is spoken by 10 percent of the employer's workforce.
- Employers must also display a poster in the workplace. The applicable poster will be developed by the Department of Child and Family Well-Being (the Agency).

What are employer recordkeeping requirements?

- There is no specific recordkeeping requirement in the ordinance, but if an employer does not have records of hours worked by employees and sick time taken, it creates a rebuttable presumption that the employer has violated the ordinance.

What are the penalties for violation?

- There is a general no-retaliation provision. Paid sick time taken under the ordinance cannot be counted as an absence that leads to discipline, demotion, suspension or any other adverse action. However, accrued paid sick time does not have to be paid out upon termination.
- Employees can file a complaint with the Agency or file a private action in Municipal Court. If a complaint is made to the Agency and the Agency cannot resolve the complaint with the employer, either the Agency or the employee may file a complaint in Municipal Court.

- Fines of up to \$1,000 per day of violation can be assessed.
- The Municipal Court may also order restitution to the employee of any paid sick time found to be unlawfully withheld.

If the Newark Ordinance is signed by Mayor Quintana, it will go into effect 120 days after its execution.

There are some subtle differences between the New York City, Jersey City and Newark sick leave ordinances. Employers with questions about those differences or their obligations under the Newark Ordinance may contact Christina A. Stoneburner at 973.994.7551 or cstoneburner@foxrothschild.com or any member of Fox Rothschild’s Labor and Employment Department.



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