

CHAPTER 10

AN ACT concerning earned sick leave and supplementing P.L.1966, c.113 (C.34:11-56a et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:11D-1 Definitions relative to earned sick leave.

1. For the purposes of this act:

"Benefit year" means the period of 12 consecutive months established by an employer in which an employee shall accrue and use earned sick leave as provided pursuant to section 2 of this act, provided that once the starting date of the benefit year is established by the employer it shall not be changed unless the employer notifies the commissioner of the change in accordance with regulations promulgated pursuant to this act. The commissioner shall impose a benefit year on any employer that the commissioner determines is changing the benefit year at times or in ways that prevent the accrual or use of earned sick leave by an employee.

"Certified Domestic Violence Specialist" means a person who has fulfilled the requirements of certification as a Domestic Violence Specialist established by the New Jersey Association of Domestic Violence Professionals.

"Child" means a biological, adopted, or foster child, stepchild or legal ward of an employee, child of a domestic partner or civil union partner of the employee.

"Civil union" means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Department" means the Department of Labor and Workforce Development.

"Designated domestic violence agency" means a county-wide organization with a primary purpose to provide services to victims of domestic violence, and which provides services that conform to the core domestic violence services profile as defined by the Division of Child Protection and Permanency in the Department of Children and Families and is under contract with the division for the express purpose of providing the services.

"Domestic or sexual violence" means stalking, any sexually violent offense, as defined in section 3 of P.L.1998, c.71 (C.30:4-27.26), or domestic violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19) and section 1 of P.L.2003, c.41 (C.17:29B-16).

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Employee" means an individual engaged in service to an employer in the business of the employer for compensation. "Employee" does not include an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement, or a per diem health care employee, or a public employee who is provided with sick leave with full pay pursuant to any other law, rule, or regulation of this State.

"Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company or other entity that employs employees in the State, including a temporary help service firm. In the case of a temporary help service firm placing an employee with client firms, earned sick leave shall accrue on the basis of the total time worked on assignment with the temporary help service firm, not separately for each client firm to which the employee is assigned. "Employer" does not include a public employer that is required to provide its employees with sick leave with full pay pursuant to any other law, rule or regulation of this State.

"Family member" means a child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner,

or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

“Health care professional” means any person licensed under federal, State, or local law, or the laws of a foreign nation, to provide health care services, or any other person who has been authorized to provide health care by a licensed health care professional, including but not limited to doctors, nurses and emergency room personnel.

“Parent” means a biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or of the employee’s spouse, domestic partner, or civil union partner, or a person who stood in loco parentis of the employee or the employee’s spouse, domestic partner, or civil union partner when the employee, spouse or partner was a minor child.

“Per diem health care employee” means any:

(1) health care professional licensed in the State of New Jersey employed by a health care facility licensed by the New Jersey Department of Health;

(2) any individual that is in the process of applying to the New Jersey Division of Consumer Affairs for a license to provide health care services who is employed by a health care facility licensed by the New Jersey Department of Health; or

(3) any first aid, rescue or ambulance squad member employed by a hospital system.

An employee listed in paragraphs (1), (2), and (3) of this definition shall be considered a per diem health care employee if that employee:

(1) works on an as-needed basis to supplement a health care employee, or to replace or substitute for a temporarily absent health care employee;

(2) works only when the employee indicates that the employee is available to work, and has no obligation to work when the employee does not indicate availability; and

(3) either:

(a) has the opportunity for full time or part time employment in their scope of practice under that healthcare provider which offers paid time off benefits greater in length than provided under this act under the terms of employment; or

(b) has waived earned sick leave benefits as provided under this act under terms of employment for alternative benefits or consideration.

“Per diem health care employee” shall not include any individual who is certified as a homemaker-home health aide.

“Retaliatory personnel action” means denial of any right guaranteed under this act and any threat, discharge, including a constructive discharge, suspension, demotion, unfavorable reassignment, refusal to promote, disciplinary action, sanction, reduction of work hours, reporting or threatening to report the actual or suspected immigrant status of an employee or the employee’s family, or any other adverse action against an employee.

“Sibling” means a biological, foster, or adopted sibling of an employee.

“Spouse” means a husband or wife.

C.34:11D-2 Provision of earned sick leave by employer.

2. a. Each employer shall provide earned sick leave to each employee working for the employer in the State. For every 30 hours worked, the employee shall accrue one hour of earned sick leave, except that an employer may provide an employee with the full complement of earned sick leave for a benefit year, as required under this section, on the first day of each benefit year in accordance with subsection c. or subsection d. of section 3 of this act. The employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned

sick leave. Unless the employee has accrued earned sick leave prior to the effective date of this act, the earned sick leave shall begin to accrue on the effective date of this act for any employee who is hired and commences employment before the effective date of this act and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, and if the employment commences after the effective date of this act, the earned sick leave shall begin to accrue upon the date that employment commences and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment, unless the employer agrees to an earlier date. The employee may subsequently use earned sick leave as soon as it is accrued.

b. An employer shall be in compliance with this section if the employer offers paid time off, which is fully paid and shall include, but is not limited to personal days, vacation days, and sick days, and may be used for the purposes of section 3 of this act in the manner provided by this act, and is accrued at a rate equal to or greater than the rate described in this section.

c. The employer shall pay the employee for earned sick leave at the same rate of pay with the same benefits as the employee normally earns, except that the pay rate shall not be less than the minimum wage required for the employee pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4).

d. Upon the mutual consent of the employee and employer, an employee may voluntarily choose to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed, but shall not be required to work additional hours or shifts or use accrued earned sick leave. An employer may not require, as a condition of an employee's using earned sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned sick leave.

e. If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, then the employee shall be entitled to all earned sick leave accrued at the prior division, entity, or location, and shall be entitled to use the accrued earned sick leave as provided in this act. If an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer, any unused accrued earned sick leave shall be reinstated upon the re-hiring or reinstatement of the employee to that employment, within six months of termination, being laid off or furloughed, or separation, and prior employment with the employer shall be counted towards meeting the eligibility requirements set forth in this section. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all of the earned sick leave they accrued when employed by the original employer, and are entitled to use the earned sick leave previously accrued immediately.

f. An employer may choose the increments in which its employees may use earned sick leave, provided that the largest increment of earned sick leave that an employee may be required to use for each shift for which earned sick leave is used shall be the number of hours the employee was scheduled to work during that shift.

C.34:11D-3 Permitted usage of earned sick leave.

3. a. An employer shall permit an employee to use the earned sick leave accrued pursuant to this act for any of the following:

(1) time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;

(2) time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;

(3) absence necessary due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee to obtain for the employee or the family member: medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence; services from a designated domestic violence agency or other victim services organization; psychological or other counseling; relocation; or legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence;

(4) time during which the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or

(5) time needed by the employee in connection with a child of the employee to attend a school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member responsible for the child's education, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

b. If an employee's need to use earned sick leave is foreseeable, an employer may require advance notice, not to exceed seven calendar days prior to the date the leave is to begin, of the intention to use the leave and its expected duration, and shall make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. If the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable, if the employer has notified the employee of this requirement. Employers may prohibit employees from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during those dates. For earned sick leave of three or more consecutive days, an employer may require reasonable documentation that the leave is being taken for the purpose permitted under subsection a. of this section. If the leave is permitted under paragraph (1) or (2) of subsection a. of this section, documentation signed by a health care professional who is treating the employee or the family member of the employee indicating the need for the leave and, if possible, number of days of leave, shall be considered reasonable documentation. If the leave is permitted under paragraph (3) of subsection a. of this section because of domestic or sexual violence, any of the following shall be considered reasonable documentation of the domestic or sexual violence: medical documentation; a law enforcement agency record or report; a court order; documentation that the perpetrator of the domestic or sexual violence has been convicted of a domestic or sexual violence offense; certification from a certified Domestic Violence Specialist or a representative of a designated domestic violence agency or other victim services organization; or other documentation or certification provided by a social worker, counselor,

member of the clergy, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member in dealing with the domestic or sexual violence. If the leave is permitted under paragraph (4) of subsection a. of this section, a copy of the order of the public official or the determination by the health authority shall be considered reasonable documentation.

c. Nothing in this act shall be deemed to require an employer to provide earned sick leave for an employee's leave for purposes other than those identified in this section, or prohibit the employer from taking disciplinary action against an employee who uses earned sick leave for purposes other than those identified in this section. An employer may provide an offer to an employee for a payment of unused earned sick leave in the final month of the employer's benefit year. The employee shall choose, no later than 10 calendar days from the date of the employer's offer, whether to accept a payment or decline a payment. If the employee agrees to receive a payment, the employee shall choose a payment for the full amount of unused earned sick leave or for 50 percent of the amount of unused earned sick leave. The payment amount shall be based on the same rate of pay that the employee earns at the time of the payment. If the employee declines a payment for unused earned sick leave, or agrees to a payment for 50 percent of the amount of unused sick leave, the employee shall be entitled to carry forward any unused or unpaid earned sick leave to the proceeding benefit year as provided pursuant to subsection a. of section 2 of this act. If the employee agrees to a payment for the full amount of unused earned sick leave, the employee shall not be entitled to carry forward any earned sick leave to the proceeding benefit year pursuant to subsection a. of section 2 of this act.

d. If an employer foregoes the accrual process for earned sick leave hours pursuant to subsection a. of section 2 of this act and provides an employee with the full complement of earned sick leave for a benefit year on the first day of each benefit year, then the employer shall either provide to the employee a payment for the full amount of unused earned sick leave in the final month of the employer's benefit year or carry forward any unused sick leave to the next benefit year. The employer may pay the employee the full amount of unused earned sick leave in the final month of a benefit year pursuant to this subsection only if the employer forgoes, with respect to that employee, the accrual process for earned sick leave during the next benefit year. Unless an employer policy or collective bargaining agreement provides for the payment of accrued earned sick leave upon termination, resignation, retirement or other separation from employment, an employee shall not be entitled under this section to payment of unused earned sick leave upon the separation from employment.

e. Any information an employer possesses regarding the health of an employee or any family member of the employee or domestic or sexual violence affecting an employee or employee's family member shall be treated as confidential and not disclosed except to the affected employee or with the written permission of the affected employee.

C.34:11D-4 Retaliation, discrimination prohibited.

4. a. No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave either in accordance with this act or the employer's own earned sick leave policy, as the case may be, or files a complaint with the commissioner alleging the employer's violation of any provision of this act, or informs any other person of their rights under this act. No employer shall count earned sick leave taken under this act as an absence that may result in the employee being

subject to discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action.

b. There shall be a rebuttable presumption of an unlawful retaliatory personnel action under this section whenever an employer takes adverse action against an employee within 90 days of when that employee: files a complaint with the department or a court alleging a violation of any provision of this section; informs any person about an employer's alleged violation of this section; cooperates with the department or other persons in the investigation or prosecution of any alleged violation of this section; opposes any policy, practice, or act that is unlawful under this section; or informs any person of his or her rights under this section.

c. Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this act.

d. Any violator of the provisions of this section shall be subject to relevant penalties and remedies provided by the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), including the penalties and remedies provided by section 25 of that act (C.34:11-56a24), and relevant penalties and remedies provided by section 10 of P.L.1999, c.90 (C.2C:40A-2), for discharge or other discrimination.

C.34:11D-5 Violations; remedies, penalties, other measures.

5. Any failure of an employer to make available or pay earned sick leave as required by this act, or any other violation of this act, shall be regarded as a failure to meet the wage payment requirements of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), or other violation of that act, as the case may be, and remedies, penalties, and other measures provided by that act, R.S.34:11-58, and section 10 of P.L.1999, c.90 (C.2C:40A-2) for failure to pay wages or other violations of that act shall be applicable, including, but not limited to, penalties provided pursuant to sections 23 and 25 of that act (C.34:11-56a22 and 34:11-56a24), and civil actions by employees pursuant to section 26 of that act (C.34:11-56a25), except that an award to an employee in a civil act shall include, in addition to the amount provided pursuant to section 26 of that act (C.34:11-56a25), any actual damages suffered by the employee as the result of the violation plus an equal amount of liquidated damages.

C.34:11D-6 Retention of records, access.

6. Employers shall retain records documenting hours worked by employees and earned sick leave taken by employees, for a period of five years, and shall, upon demand, allow the department access to those records to monitor compliance with the requirements of this act. If an employee makes a claim that the employer has failed to provide earned sick leave required by this act and the employer has not maintained or retained adequate records documenting hours worked by the employee and earned sick leave taken by the employee or does not allow the department access to the records, it shall be presumed that the employer has failed to provide the earned sick leave, absent clear and convincing evidence otherwise. In addition, the penalties provided by the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.) for violations of the requirements of that act regarding the maintaining and disclosure of records shall apply to violations of the requirements of this section.

C.34:11D-7 Notification to employees.

7. a. Employers shall provide notification, in a form issued by the commissioner, to employees of their rights under this act, including the amount of earned sick leave to which they are entitled and the terms of its use, and remedies provided by this act to employees if an employer fails to provide the required benefits or retaliates against employees exercising their rights under this act. Each covered employer shall conspicuously post the notification in a place or places accessible to all employees in each of the employer's workplaces. The employer shall also provide each employee employed by the employer with a written copy of the notification: not later than 30 days after the form of the notification is issued; at the time of the employee's hiring, if the employee is hired after the issuance; and at any time, when first requested by the employee. The commissioner shall make the notifications available in English, in Spanish, and any other language that the commissioner determines is the first language of a significant number of workers in the State and the employer shall use the notification in English, Spanish or any other language for which the commissioner has provided notifications and which is the first language of a majority of the employer's workforce.

b. The commissioner shall advise any employee who files a complaint pursuant to this section and is covered by a collective bargaining agreement, that if the agreement provides for earned sick leave, the employee may have a right to pursue a grievance under the terms of the agreement.

C.34:11D-8 Provisions preemptive; construction of act.

8. a. The governing body of a county or municipality shall not, after the effective date of this act, adopt any ordinance, resolution, law, rule, or regulation regarding earned sick leave. The provisions of this act shall preempt any ordinance, resolution, law, rule, or regulation regarding earned sick leave adopted by the governing body of a county or municipality.

b. No provision of this act, or any regulations promulgated to implement or enforce this act, shall be construed as:

(1) requiring an employer to reduce, or justifying an employer in reducing, rights or benefits provided by the employer pursuant to an employer policy or collective bargaining agreement which are more favorable to employees than those required by this act or which provide rights or benefits to employees not covered by this act;

(2) preventing or prohibiting the employer from agreeing, through a collective bargaining agreement or employer policy, to provide rights or benefits which are more favorable to employees than those required by this act or to provide rights or benefits to employees not covered by this act;

(3) prohibiting an employer from establishing a policy whereby an employee may donate unused accrued earned sick leave to another employee or other employees; or

(4) superseding any law providing collective bargaining rights for employees, or in any way reducing, diminishing, or adversely affecting those collective bargaining rights, or in any way reducing, diminishing, or affecting the obligations of employers under those laws.

Employees or employee representatives may waive the rights or benefits provided under this act during the negotiation of a collective bargaining agreement.

c. With respect to employees covered by a collective bargaining agreement in effect at the time of the effective date of this act, no provision of this act shall apply until the stated expiration of the collective bargaining agreement.

C.34:11D-9 Severability.

9. The provisions of this act shall be deemed to be severable and if any section, subsection, paragraph, sentence or other part of this act is declared to be unconstitutional, or the applicability thereof to any person is held invalid, the remainder of this act shall not thereby be deemed to be unconstitutional or invalid.

C.34:11D-10 Development of multilingual outreach program.

10. The commissioner shall develop and implement a multilingual outreach program to inform employees, parents, and persons under the care of health care providers about the availability of earned paid sick leave pursuant to this act. The program shall include the distribution of written materials in English, Spanish and any language that is the primary language of 10 percent or more of the registered voters in the State to all child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers and other healthcare providers. The commissioner shall, during each calendar year, allocate not less than \$500,000 to the program, which shall be regarded as a cost of administration of temporary disability and family temporary disability benefits and be charged to the administration account of the State disability benefit fund, except that the allocation made pursuant to this subsection shall not result in the total amount credited to administrative costs exceeding the maximum amount permitted pursuant to subsection (a) of section 22 of P.L.1948, c.110 (C.43:21-46).

C.34:11D-11 Rules, regulations.

11. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the purposes of this act.

12. This act shall take effect on the 180th day next following enactment.

Approved May 2, 2018.