

Jersey City Passes Paid Sick Leave Law

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Following the lead of its neighbor across the Hudson River [[see our earlier coverage of New York's paid sick leave law here](#)], New Jersey's second most populated city, Jersey City, has passed an ordinance to require employers with ten or more employees to offer as many as five paid sick days a year. The bill is sweeping in its application, impacting all businesses employing workers who work at least 80 hours a calendar year in Jersey City. However, employee headcount is critical to determining employers' obligations under the law:

10 Or More Employees In Jersey City: 5 Paid Sick Days

Fewer Than 10 Employees In Jersey City: 5 Unpaid Sick Days

Counting Employees: Full-time, part-time and temporary workers all count toward the total number of employees for purposes of this new law. Further, if an employer's workforce fluctuates, the number of employees will be calculated based on the average number of employees who worked for compensation during the calendar year.

Accrual and Carry Over: Accrual of paid sick leave is not automatic. Rather, workers earn one hour of sick time, paid or unpaid, for each 30 hours worked, accruing a maximum of 30 hours per year. New workers can only begin to use sick time on the 90th calendar day of employment. Employees may carry over up to 40 hours of sick time into a new calendar year but may not use more than 40 hours of paid sick time in any year. Further, if an employee is separated from employment but later re-hired within six months, the previously accrued but unused sick time must be reinstated. However, the law makes clear that employers need not pay out accrued but unused sick time at separation.

Using Sick Time: Likely inconsistent with many employers' policies, employees can use sick time in hourly increments or the smallest unit of time the employer uses to account for absences or other time off. Like FMLA leave, Jersey City sick time covers more than an employee's own illness. It can be used to care for the mental or physical illness, injury or health condition, treatment, medical diagnosis, or preventative care of the employee's family members. It can also be used due to 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. The Jersey City leave law is more broad than federal or New Jersey family leave laws, covered family members include a wide range of relations, including, but not limited to, biological, adopted, foster or step child, legal ward, domestic partner, civil union partner, grandparents and spouses.

Requesting Sick Time: Employees need only make a verbal request and must only provide notice “as soon as practicable.” Employers may ask for reasonable documentation if the employee requests more than three consecutive days of sick time. However, employers may not, as a condition of an employee’s taking sick time, require that an employee search for or find a replacement worked to cover the hours during which the employee is absent.

Notices Covered employers must provide employees with written notice of the law at the commencement of their employment. Additionally, notice of the law must be posted in an accessible place. Violation of the notice and posting requirements carries a civil fine of up to \$100 per employee and \$500 per establishment.

Record-Keeping: Employers must retain records showing the hours worked and paid sick leave taken by all employees for a period of three years. Records must be made available to the Department of Health and Human Services. Under the law, a failure to maintain adequate records creates a rebuttable presumption that the employer has violated the ordinance.

Enforcement and Audits: The Jersey City Department of Health and Human Services is vested with the power to enforce the ordinance, adjudicate complaints, provide information about paid sick leave, create posters and notices and conduct audits. Audits and investigations may include private interviews of employees and former employees. Violations carry fines up to \$1,250 and/or a period of community service not to exceed 90 days.

Anti-Retaliation and Private Right of Action: The ordinance also creates a private right of civil action *without* the need to first file a complaint to the Jersey City Department of Health and Human Services. Further, employers may not retaliate against employees for exercising their rights under the law, including any employee’s request for using sick time or filing a complaint about a violation. The ordinance specifically creates a rebuttable presumption of unlawful retaliation if the employer takes adverse action against an employee within 90 days of filing a complaint, informing any person about an alleged violation, cooperating in the investigation or prosecution of any alleged violation, opposing any policy or practice made unlawful by the law or informing any person of their rights available under the ordinance.

No Duplication of Leave: If an employer already provides a paid leave policy (i.e., paid time off or “PTO”) which provides leave equal to or in excess of what is required under the law, then there is no need to provide additional leave because of this law.

A link to a copy of City Ordinance 13.097 may be found by clicking here: [Jersey City Paid Leave Law](#).

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