

Morristown, New Jersey, Passes Paid Sick Leave Ordinance

By James M. McDonnell and Beth L. Braddock

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Private-sector employees who work at least 80 hours during a calendar year in Morristown, New Jersey, will be entitled to paid sick leave under Ordinance No. 35-2016, passed by the Morristown Town Council on September 13, 2016.

Ordinance No. 35-2016 takes “effect upon passage and publication” or at the expiration of current collective bargaining agreements, for employees working under CBAs. Therefore, most employers likely will have little time to comply with its provisions and should prioritize compliance with the notice, posting, and recordkeeping requirements.

The Ordinance, much like its counterparts in other New Jersey municipalities, requires employers with at least 10 employees to provide 40 hours of paid sick leave during a calendar year. Employers with fewer than 10 employees must provide at least 24 hours of paid sick leave during a calendar year.

However, workers in the child care, home health care, and food service industries, regardless of the number of employees the employer has, must receive 40 hours of paid sick leave during a calendar year.

The Ordinance does not apply to employees covered by a collective bargaining agreement, to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. The Ordinance also does not apply to employees covered by a collective bargaining agreement in effect at the time of the effective date of the Ordinance; however, if the terms of an expired collective bargaining agreement provide paid sick leave that is more generous than provided by the Ordinance, those terms of the expired collective bargaining agreement apply to the extent required by law.

Of course, the Ordinance does not supersede or affect more generous sick leave policies that an employer already may follow.

Key Provisions

An employee accrues paid sick leave at the rate of one hour for every 30 hours worked. Accrued sick time may be used in the smaller of:

1. hourly increments; or
2. the smallest increment utilized by the employer’s payroll system.

Paid sick time starts to accrue on an employee’s first day of employment and may be used by an employee after her or his 90th day of employment.

Accrued but unused paid sick leave may be carried over from one calendar year to the next; however, the Ordinance states that an employer need not provide more than 40 hours of paid sick leave in a calendar year. Furthermore, there is no entitlement to a pay-out for accrued but unused paid sick leave at the time of an employee’s separation.

The Ordinance permits an employee to use paid sick leave for her or his own medical condition or preventive medical care, as well as for the care of a “Family Member.” A “Family Member” includes biological, adopted, or foster children, stepchildren, parents, grandparents, spouse, domestic partner, civil union partner, and siblings, among other relations.

Morristown also prohibits an employer from retaliating against an employee for requesting or using paid sick leave. The Ordinance defines retaliation to include threats, discipline, discharge, suspension,

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demotion, or reduction of hours, among other actions.

Notice, Posting Requirements

An employer must provide written notice to each employee of her or his right to paid sick time, the accrual rate, the prohibition against retaliation, and other provisions of the Ordinance.

An employer also must display a poster (in English and in any language that at least 10 percent of the workforce speaks) containing the information in the notice in a conspicuous place. Morristown's Department of Administration may prepare the written notices and posters in Spanish and English for employers' use in complying with the Ordinance.

Recordkeeping

The Ordinance requires an employer to maintain records documenting hours and paid sick leave utilized by an employee. The Department of Administration maintains the right to access the records to monitor compliance. Furthermore, an employer's failure to maintain adequate records creates a rebuttable presumption that the employer violated the Ordinance.

Less clear is the recordkeeping requirement as it pertains to exempt employees under the federal Fair Labor Standards Act. The Ordinance provides that exempt employees are presumed to work 40 hours a week for purposes of accrual, unless the normal workweek is less than 40 hours. The recordkeeping provision, however, fails to distinguish an exempt from non-exempt employee with respect to an employer's recordkeeping obligations.

Enforcement

An employer may be subject to fines, penalties, and an award of restitution as a result of any violation of the Ordinance. The Ordinance further permits a private cause of action in the Morristown Municipal Court, which may order reinstatement or injunctive or declaratory relief, among other relief.

Morristown joins a growing list of New Jersey municipalities that have enacted a paid sick leave requirement. (See our articles, [Elizabeth, New Jersey, Ordinance Requires Private Sector Employers to Provide Paid Sick Leave](#) and [Newark, New Jersey Enacts Paid Sick Leave Ordinance](#).)

Jackson Lewis is available to answer inquiries regarding this new law and assist employers in achieving compliance with its requirements.

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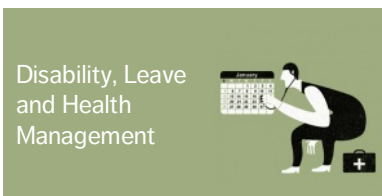
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