

# Legal Alert: Jersey City Passes Paid Sick Leave Law; Applies to Employees Who Work At Least 80 Hours Per Calendar Year in City

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**Executive Summary:** The Jersey City Council voted 7-1 to pass a bill that will provide paid sick leave for workers in New Jersey's second largest city. Any business with 10 or more employees must offer as many as five paid sick days per year. Businesses with fewer employees will be required to provide unpaid sick days. The ordinance carries civil penalties, creates a private right of action for aggrieved employees, and empowers the Jersey City Department of Health and Human Services to audit employers and investigate and adjudicate complaints.

## Which Employers Are Affected?

The law applies to all businesses employing workers who work at least 80 hours in a calendar year in Jersey City, but distinguishes between large and small employers in whether the time must be paid. Employees of businesses with 10 or more employees in Jersey City can earn up to five paid sick days each year. Employers with fewer than 10 employees would have to provide five unpaid sick days. Full-time, part-time, and temporary workers count toward the total number of employees. If the size of the workforce fluctuates, the number of employees will be calculated based on the average number of employees who worked for compensation during the preceding calendar year.

## How Are Sick Days Accrued And Used?

Under the new law, workers would earn one hour of sick time, paid or unpaid, for each 30 hours worked. Workers may accrue up to 40 hours of sick time per calendar year. Workers may begin using sick time on the 90th calendar day of employment. Sick time may be taken in hourly increments or the smallest unit of time the employer uses to account for absences or other time off.

Employees are permitted to carry over up to 40 hours of paid sick time into a new calendar year. Furthermore, if an employee is separated from employment but re-hired within six months, previously accrued paid sick time that was not used must be reinstated. However, employers need not pay out accrued but unused sick time at separation.

The ordinance covers more than just the employee's own illness. Sick time may be taken for the mental or physical illness, injury, or health condition, treatment, medical diagnosis, or preventative care of the employee or the employee's family member. Family member includes a biological, adopted, or foster child, step-child or legal ward or the child of a domestic partner, civil union partner, or a child to whom the employee stands in loco

parentis; a biological, foster, step-parent, or adoptive parent or legal guardian of the employee or the employee's spouse, domestic partner, or civil union partner; a person to whom the employee is legally married or with whom the employee has entered into a civil union; a grandparent or spouse, civil union partner, or domestic partner of a grandparent; a grandchild; a sibling; and a domestic partner of an employee. This is a broader definition of family member than that under the federal and state leave laws. Sick time can also be taken if the employee's workplace is closed by order of a public official, or for the 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.

Employees need only make a verbal request for sick time, and are only required to provide their employers notice "as soon as practicable." If an employee requests sick time of more than three consecutive days, the employer may require reasonable documentation that the sick time has been used for a permitted purpose.

## **What Must Employers Do?**

### ***Notices and Posters***

Covered employers must provide employees written notice of the law at the commencement of employment. Employers must also post notice of the law in a conspicuous and accessible place. The Jersey City Department of Health and Human Services has been charged with creating a poster and individual notices. 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 the paid sick leave taken by all employees for a period of three years. Employers must permit the Department of Health and Human Services access to the records. An employer's failure to maintain or retain adequate records creates a rebuttable presumption that the employer has violated the ordinance, absent clear and convincing evidence otherwise.

### ***Enforcement and Audits***

The Jersey City Department of Health and Human Services will enforce the ordinance. The Department will take and adjudicate complaints of violations of the ordinance, provide information and outreach about paid sick leave, and create posters and notices for employers. The Department is also empowered to conduct audits, on-site investigations, and take other measures to ensure employer compliance. Department investigators may interview employees and former employees privately, and are authorized to determine whether employers have complied with the ordinance. 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 creates a private right of action for aggrieved employees, without the need to first submit a complaint to the Department of Health and Human Services. Employers may not retaliate against employees for

requesting or taking sick time, or filing a complaint about a violation. The ordinance 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 ordinance, or informing any person about rights available under the ordinance.

### **What If An Employer Already Provides Paid Leave?**

Any employer with a paid leave policy, such as a paid time off policy, that provides an amount of leave sufficient to meet the total annual accrual requirements of the ordinance that may be used for the same purposes and under the same conditions as paid sick time under the ordinance is not required to provide additional paid sick time.

### **What Does this Mean for Employers?**

Employers with employees who work in Jersey City at least 80 hours in a calendar year must provide sick time to those employees. Depending on the number of employees, the leave must either be paid or unpaid. Employers with paid time off policies should examine their policies to determine if they comply with the new ordinance. Additionally, employers should be aware of the notice and posting requirements and recordkeeping requirements.

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