



# Legal Alert: Newark City Council Passes Paid Sick Leave Ordinance; Mayor Expected To Approve Measure

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**Executive Summary:** Following Jersey City's lead, New Jersey's largest city is poised to enact an ordinance that would require employers to provide up to 40 hours per year of paid sick time to Newark employees.

## **Ordinance Would Provide Up to 40 Hours of Paid Sick Leave to Employees Who Work in the City**

Newark's mayor has promised to sign an ordinance passed by the Newark City Council that would require private employers with workers in Newark to provide up to 40 hours of paid sick time per year. Employees of private-sector employers who work in Newark at least 80 hours in a year would be eligible to earn paid sick time immediately upon hire, although they would not be eligible to use it until they have been employed for 90 days.

The ordinance applies to private-sector employees who work at least 80 hours per year within the city of Newark. Specifically exempted from the ordinance are public employees, employees of construction unions, and employees covered by an existing collective bargaining agreement. If a collective bargaining agreement expires, however, the employees previously covered by the agreement will be subject to the ordinance.

## **Earning and Accrual of Paid Sick Time**

Eligible employees will earn one hour of paid sick time for every 30 hours worked. Employees of employers with at least 10 employees and those who work in the childcare, home health care and food service industries can accrue up to 40 hours in a calendar year. Employees of employers with nine or fewer employees who do not work in the listed industries can accrue up to 24 hours of paid sick time in a calendar year. In determining the number of employees, full-time, part-time, and temporary employees are counted. Where the size of the workforce fluctuates, the size of the business is based on the average number of employees during the preceding calendar year.

Employees are able to carry over up to 40 hours of paid sick time from one year to the next. Alternatively, employers may pay the employee for any unused time at the end of the calendar year. Employers are not required, however, to pay employees for unused time at the time of termination.

## **Permissible Uses for Paid Sick Time**

Eligible employees may use paid sick time provided by the ordinance for their own or a family member's mental or physical illness, injury, or health condition; for closure of the employee's place of business by order of a public health official; to care for a child whose school or daycare has been closed by order of a public health official; or to



care for a family member whose exposure to a communicable disease would jeopardize the health of others in a community, as determined by appropriate governmental authorities, regardless of whether the family member has actually contracted the disease.

Under the ordinance, the term "family members" includes:

- Biological, adopted, foster or stepchildren, legal wards, and children to whom the employee stands in loco parentis;
- Biological, foster, adoptive and stepparents, and legal guardians of the employee or an employee's spouse, domestic partner or civil union partner, and persons who stood in loco parentis when the employee was a child;
- Spouses, civil union partners, and domestic partners;
- Grandparents, including the spouse, civil union partner or domestic partner of a grandparent;
- Grandchildren; and
- Siblings.

This definition is broader than the definition of "family member" under the federal Family and Medical Leave Act and under the New Jersey Family Leave Act.

Employers may only request that employees provide reasonable documentation that the paid sick time has been used for a purpose covered by the ordinance after the employee has used three consecutive days or three consecutive instances of time. In such situations, employers can request documentation signed by a health care professional indicating that the sick time was necessary, but the employer may not require the employee to explain the nature of the illness.

### **Effect on Existing Leave Policies**

Employers with sick leave policies that are more generous than the ordinance will not be required to provide additional sick leave. However, employers should take note of additional recordkeeping requirements, such as tracking employees' use of time that may not otherwise be tracked as sick time under some paid time off or PTO policies.

### **Notice and Recordkeeping Requirements**

Covered employers must provide new employees with written notice explaining their rights under the ordinance at hire or "as soon as practicable" for employees already employed on the effective date of the ordinance. The notice must describe the right to paid sick time, the rate of accrual and amount of time available, the terms of its use, the right to be free from retaliation, and the right to file a complaint or bring an action in municipal court if paid sick time is denied by the employer or the employee is retaliated against for taking paid sick time. Employers must also conspicuously post a notice explaining the ordinance and providing the same information in English and any other language that is the first language of at least 10 percent of the workforce.



The ordinance also requires employers keep to records of the paid sick time taken by employees under the ordinance. Such records must be available upon the city's request. Failure to provide the records upon request creates a rebuttable presumption that the employer has violated the ordinance.

### **Anti-Retaliation Provision and Penalties for Non-Compliance**

The ordinance prohibits interference with the exercise of any rights under the ordinance and retaliation against employees exercising rights under the ordinance. A private right of action also is created in the Newark municipal courts.

Employers who violate the ordinance can be liable for the monetary value of the paid sick time not provided as well as penalties of up to \$1000, 90 days' imprisonment or 90 days' community service.

### **Effective Date of Ordinance**

The ordinance will take effect 120 days after it is signed. Newark's mayor has promised to sign the measure, and so we anticipate that the ordinance will become effective in mid-June 2014.

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

Employers should review their existing leave policies to ensure compliance with the new ordinance. Due to the ordinance's application to employees who work in Newark at least 80 hours in a calendar year, the ordinance may apply to employees who work in the city only occasionally. We will update this Alert when Newark approves a form of posting and also will keep you posted on a statewide initiative pending in the New Jersey Assembly.

If you have any questions regarding this Alert or other labor or employment related issues, please contact the authors, [Salvador P. Simao](mailto:ssimao@fordharrison.com), [ssimao@fordharrison.com](mailto:ssimao@fordharrison.com), who is a partner in our [Berkeley Heights](#), New Jersey office, or [Joanna S. Rich](mailto:jrich@fordharrison.com), [jrich@fordharrison.com](mailto:jrich@fordharrison.com), who is a senior associate in our [Berkeley Heights](#) office. You may also contact the FordHarrison attorney with whom you usually work.