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EMPLOYER ALERT

Paid Sick Leave Is the Law in New Jersey

On May 2, 2018, Governor Phil Murphy signed the *New Jersey Earned Sick and Safe Days Act* into law, requiring all New Jersey employers to provide paid sick leave to their employees. New Jersey becomes the tenth state to adopt such legislation.

The new law requires all New Jersey employers to provide one hour of paid sick leave for every 30 hours worked by an employee. Employees of small employers (less than 10 employees) may accrue and carry forward up to 40 hours of earned sick leave, while employees of companies with 10 or more employees may accrue and carry forward up to 72 hours. If employer and employee agree, an employee may choose to work additional hours or shifts in lieu of time missed from work. The law preempts existing municipal ordinances concerning earned sick leave.

The law permits the use of earned sick leave for any of four categories:

- 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;
- 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;
- absence necessary due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence; or
- 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 health emergency;

The term "Family member" is broadly defined as "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." It also includes, for employees without a spouse, domestic partner or civil union partner, any one person designated by the employee.

During the last month of the benefit year employers may offer employees payment for unused accrued sick leave and the employee may choose to accept or decline the offer of payment. In so doing, employees will be permitted to accept either the full amount of the offer of payment or 50% of the offer and any amounts declined may be carried forward to the next benefit year.

Absent an existing policy or collective bargaining agreement, employers will not be required to pay employees unused sick leave at the time of separation from employment.

Employees wishing to take sick leave may be required to provide notice to their employer. In the event of a foreseeable need for sick leave, the employer may require up to, but not more than, seven days advance notice by the employee. In the event of unforeseen circumstances, an employer may require notice as soon as practical. The law allows the employer to request reasonable documentation regarding sick leave of three or more consecutive days.

As with other laws affecting the employment relationship, retaliation or discrimination against employees is expressly prohibited. In fact, the law creates a rebuttable presumption of unlawful retaliation by the employer for certain actions taken against an employee exercising his or her rights under the law.

Employers will be required to maintain records documenting hours worked and sick leave taken, for a period of five years. Employers must also notify employees of their rights under the new law.

The law becomes effective 120 days after its enactment.



This Employer Alert is intended only as a general discussion of the subject matter. As with any legal topic, each case requires a thorough analysis of the facts to determine the best steps for your business. It is not intended to be construed as legal advice.

Lawrence Z. Kotler is a partner with the law firm of **Carlin & Ward, P.C.** in Florham Park, New Jersey. Mr. Kotler regularly represents employers and employees in employment law matters in New Jersey, including the defense and prosecution of employment related claims. He has extensive experience counseling employers in day to day employment matters and the preparation of employee handbooks, confidentiality and non-competition agreements and related policies and agreements. Mr. Kotler also represents employers and employees in negotiating employment contracts and separation agreements.