



# EARNED SICK LEAVE

## What Employers Need to Know

Most New Jersey employers are now required to provide employees with earned sick leave to:

- care for their own, or a family member's, physical or mental health or injury
- address domestic or sexual violence
- attend a child's school-related meeting, conference, or event
- take care of children when school or child care is closed due to an epidemic or public health emergency

This sheet will be updated as additional information becomes available; note the revision date in the footer.

For more details or to read the law and proposed rules, go to [nj.gov/labor/earnedsick](http://nj.gov/labor/earnedsick).

**Note:** If you have an existing sick leave policy for employees, it must meet or exceed the requirements of the law.

### WHO'S COVERED BY THE LAW?

Employers must provide earned sick leave to full- and part-time employees. Employers are not required to provide earned sick leave to the following workers:

- individuals employed in the construction industry under a union contract
- per diem health care employees
- public employees who are provided with sick leave at full pay under any other NJ law or rule
- independent contractors who do not meet the definition of an employee under NJ law

### NOTICE OF EMPLOYEE RIGHTS

You must give each employee written notice of their right to earned sick leave, including accrual and use of sick leave, and the right to file a complaint and be free from retaliation. The notice must give the start and end dates of your benefit year. The notice is available in English and 12 other languages. Employees have a right to the notice in English, and, if available on the NJDOL website, their primary language. Find this notice at [nj.gov/labor/earnedsick](http://nj.gov/labor/earnedsick).

### ESTABLISHING A BENEFIT YEAR

You must establish a single benefit year for all employees. To change the benefit year, you must provide notice in writing to the NJDOL Commissioner at least 30 calendar days prior to the proposed change.

### EARNED SICK LEAVE ACCRUAL AND USE

Employees accrue 1 hour of earned sick leave for every 30 hours worked, up to a maximum of 40 hours of leave per benefit year.

Rate of Accrual	Date Accrual Begins	Date Earned Sick Leave Available for Use
1 hour for every 30 hours worked	October 29, 2018 or the first day of employment, whichever is later	February 26, 2019 or 120 days after first day of employment, whichever is later

An employee can work additional hours to compensate for work missed rather than use earned sick leave, with the employer's consent. However, you cannot require this, or require an employee to use earned sick leave.

### ADVANCED EARNED SICK LEAVE

Instead of applying the accrual method described above, you may choose to advance employees with at least 40 hours of earned sick leave on the first day of the benefit year, for use throughout the benefit year. For an employee who begins employment during the benefit year, you may prorate advanced earned sick leave for the remainder of the benefit year, so long as you track the hours that the employee actually works and the amount of actual sick leave accrued. You will not have to track accruals if you advance the full 40 hours of earned sick leave.

## EMPLOYEE TRANSFERS, REHIRES, AND SUCCESSOR EMPLOYERS

- If you transfer an employee within New Jersey, he or she keeps their accrued/advanced sick leave.
- If you terminate, lay off or furlough an employee, then rehire or reinstate her/him in New Jersey within six months, the prior accrued/advanced sick leave must be returned to the employee.
- If a successor employer takes the place of an existing employer, all employees of the predecessor employer keep their accrued/advanced sick leave from the predecessor employer.

## PAYMENT OF EARNED SICK LEAVE

During a period of earned sick leave, you must pay employees at the same rate the employee normally earns and, you must pay at least the state minimum wage. To calculate the rate of earned sick leave pay for an employee whose pay fluctuates, has two or more different jobs, is paid by piecework, or whose pay includes gratuities, food, or lodging, add together the total earnings, exclusive of overtime pay, for the seven most recent workdays, and divide that by the total hours of work during that seven-day period. For base plus commission or commission only, the earned sick leave pay rate is the hourly base wage or the state minimum wage, whichever is greater.

## RECORDKEEPING

You must keep and maintain records for five years documenting compliance with the law, including employee hours worked, and earned sick leave that has been accrued/advanced, used, paid out, and carried over. Reasons for used earned sick leave must be kept confidential unless the employee gives written permission to disclose it. Records must be made available to NJDOL if requested.

## ADVANCE NOTICE

If the need is foreseeable, you can require up to seven days' advance notice of an employee's intention to use earned sick leave. If the need is unforeseeable, you may require the employee to provide notice as soon as is practical, provided you have stated that requirement in advance. If you have not stated the notice requirement, you must allow the employee to use the unforeseeable earned sick leave without having provided any prior notice. An employer may prohibit the employee from using foreseeable earned sick leave during high-volume periods or special events, but you must provide reasonable notice of those dates.

## DOCUMENTATION

You can require reasonable documentation if an employee uses more than three consecutive workdays as earned sick leave or where the employee's need for earned sick leave is not foreseeable and is being sought for use during high-volume periods or special events. The law prohibits you from requiring the employee to specify the reason for earned sick leave. Find a list of reasonable documentation: [nj.gov/labor/earnedsick](http://nj.gov/labor/earnedsick).

## UNUSED EARNED SICK LEAVE

An employee may carry over up to 40 hours of unused earned sick leave to the next benefit year. However, you are required only to let an employee use up to 40 hours of earned sick leave per benefit year. An employer may choose — but is not required — to pay an employee for unused earned sick leave at the end of the benefit year.

## RETALIATION

You cannot retaliate against an employee for requesting or using earned sick leave, filing a complaint with NJDOL, or because the employee informs any other person of his or her rights under the law. Retaliation includes any discipline, discharge, demotion, suspension, loss or reduction of pay, or any other adverse action. This includes "no fault" attendance policies, where an employee receives a point or a demerit for any absence, and is subjected to discipline or loss of a promotional opportunity.

## COMPLAINTS

If an employer allegedly has violated the law, NJDOL will notify the employer by certified mail and provide an opportunity to request a formal hearing. The request must be received within 15 days of receipt of the notice. If the dispute cannot be resolved in an informal settlement conference, it will be forwarded for a formal hearing.

## QUESTIONS

Email [wage.hour@dol.nj.gov](mailto:wage.hour@dol.nj.gov). Call 609-292-2305 between 8:30 a.m. and 4 p.m. and ask for information about earned sick leave. TTY users can contact this department through NJ Relay: 7-1-1.

