

NJ Earned Sick Leave

Small Business **Guide**



It's the law in New Jersey!
myworkrights.nj.gov

A Message to Small Businesses

Having paid sick days keeps your employees healthy and engaged at work.

In New Jersey, earned sick leave applies to all businesses, big and small. We know that keeping up with rules can be tricky and this guide can help you understand them. We want both employees and employers to benefit from the Earned Sick Leave law.

Let's team up to make sure every worker in New Jersey is treated fairly and every business can follow the rules.

WHAT

THIS GUIDE COVERS

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When you see **highlighted words**, you can find a definition in the glossary.

Disclaimer: This guide is for informational purposes only. Please visit our website for complete information, forms, and FAQs on New Jersey's Earned Sick Leave Law: mysickdays.nj.gov





THE BASICS

Employers of all sizes must provide earned sick leave to nearly all employees.

Most employees are covered

- **No matter how much they work:** full-time, part-time, seasonal, and temporary employees
- **No matter how they are paid:** includes salary, hourly, cash, piece rate, etc.
- **Regardless of immigration status:** NJ earned sick leave and all Wage and Hour laws apply to all covered workers, regardless of their immigration status.

There are very few **worker exemptions**

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

You also have the option to provide your employees with 40 hours of earned sick leave up front.

Employees can use sick time for time they were scheduled to work.



IT'S FOR MORE THAN BEING SICK

Employees can use earned sick leave for:

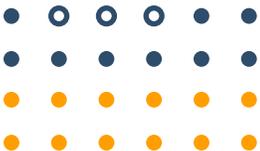
- Physical or mental health conditions
- Caring for a **loved one**
- Wellness care (for example, check ups and vaccinations)
- School-related conferences, meetings and other events, when their attendance is requested by a school staff member
- Coping with domestic/sexual violence or caring for a loved one who is a victim/survivor
- Special public health uses
 - School closures during a public health emergency
 - Quarantine based on advice from a health care provider or public health authority



HOW

EMPLOYEES EARN THEIR SICK TIME

- **Accrued leave:** This is one method for calculating how much leave employees have. Employees earn, or “accrue” 1 hour of sick leave per 30 hours worked, up to 40 hours per benefit year.
- **Advanced leave:** You can provide employees with 40 hours of leave up front for them to take later. This way you don’t have to track how much leave they accrue. You would have to keep other records.
- You can advance some leave to your employees and have them accrue the rest.
- You can have new employees **wait up to 120 calendar days** before they can use earned sick leave, but they start earning sick leave right away.
- You can have different methods for employees to earn their sick time when there is reason to do so. For example, you might advance sick leave to full-time employees but have part-time employees accrue their sick time. It’s a good idea to document a clear business reason to keep it fair.
- Regardless, you must meet the minimum requirements of the law and provide employees at least one hour of sick leave for every 30 hours worked, up to 40 hours per benefit year.



KEEP IN MIND:

EARNED SICK LEAVE AND PTO POLICIES

You can use an existing **Paid Time Off (PTO)** policy to follow the Earned Sick Leave law, as long as it meets or goes beyond the law's basic requirements. For example, your employee needs to be able to use PTO for any of the reasons the Earned Sick Leave law allows, have the same notice and documentation requirements, etc.



For example, you can't use your PTO policy to meet the requirements of the Earned Sick Leave law if:

- Your employee can't use PTO for school-related conferences, meetings, or other events, when their attendance is requested by a school staff member.
- You require your employee to give advanced notice to use PTO for unexpected health issues (like waking up with a fever).
- Your employee has to find coverage to use PTO.

You can have different policies for earned sick leave and other types of PTO, like vacation days, administrative leave, or extra sick time beyond the required 40 hours per year. If you count them separately, only the earned sick leave policy needs to follow all the Earned Sick Leave law's requirements.

If you don't separate earned sick leave from PTO, then all PTO must be treated as earned sick leave, even if it's more than 40 hours.

Keep in mind, you cannot make an employee use earned sick leave before they use NJ Paid Family and Medical Leave benefits (also known as Temporary Disability and Family Leave Insurance).

Learn more at myleavebenefits.nj.gov/employerkit

KEEP

EMPLOYEES INFORMED

You must share the “NJ Earned Sick Leave Notice of Employees Rights” with your employees.

This notice gives an overview of the rights employees have under the NJ Earned Sick Leave law and the basics of the law

You can find the notice online (nj.gov/labor/posters).

- **Post the sick leave notice** where everyone can see it, like in break rooms or common areas. You can also share by email or post on an employee website.



- Give each employee a **written copy** of the notice when you hire new employees and when they ask for one.
- **Keep records** that you gave employees the notice, like signed copies or email receipts.

- You must provide notice in **your employee’s primary language** if it’s on NJDOL’s website. We have multiple languages on our website.



Download Here: nj.gov/labor/posters

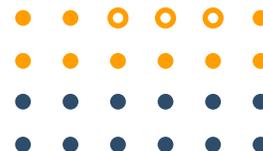
WHEN

YOUR EMPLOYEE TAKES LEAVE

- **Remind your employees** about the earned sick leave policy.
- Follow allowable **employee notification requirements**



- **For planned leave**, like for a doctor's appointment, you can ask employees to let you know up to seven days in advance. Make sure your policy clearly states this requirement. Earned sick leave is considered planned or foreseeable when an employee can reasonably know in advance they will need it.
 - **For unplanned leave**, like waking up sick, employees should inform you as soon as possible. Earned sick leave is considered unplanned or "unforeseeable" when an employee doesn't know ahead of time that they will need it.
- Keep their reason for leave **confidential**.
 - **You are responsible for arranging coverage**. You can't require employees to find someone to cover their shift.
 - You can request **reasonable documentation** from an employee if they take leave for three or more consecutive days and for limited **blackout periods**.
 - Pay employees their **normal rate** during the **same pay period** when they use Earned Sick Leave.
 - Do not punish employees for using their earned sick leave or for asking about their rights. **Retaliation is against the law**.



CALCULATING

NORMAL RATE OF PAY

Pay employees at their regular hourly rate. This pay must meet or exceed the state **minimum wage**.



For employees with non-standard pay, calculate sick leave pay by adding their total earnings (excluding overtime) from the last seven days worked and dividing by the total hours worked during those days.

These rules apply when:

- The employee's pay varies.
- The employee has multiple jobs with your company.
- The employee is paid by the piece (piecework).
- The employee's pay includes tips, food, or lodging.

For employees paid by commission, use either their hourly base wage or the state minimum wage, whichever is higher.

UNUSED

SICK LEAVE

You can not require an employee to “use or lose” their earned sick leave. You must allow employees to carry over up to 40 hours of unused Earned Sick Leave into the next benefit year. You are only required to permit them to use up to 40 hours of leave per benefit year, no matter how much time they have carried over and accrued.

Additionally, you have the option to pay employees for their unused earned sick leave at the end of the benefit year.

If an employee no longer works for you, the law does not require you to pay out unused sick leave.

EMPLOYEE TRANSFERS, REHIRS, AND SUCCESSOR EMPLOYERS

- Employees transferred to another business location of the same employer within NJ retain their sick leave.
- If the employee leaves and is rehired within six months, employees keep their sick leave.
- If a new employer takes over the business, they must maintain the sick leave from the predecessor



CREATE

YOUR EARNED SICK LEAVE POLICY

- **Point of contact:** Decide who the employees should inform when they need to take sick leave.
- **Leave accrual:** Determine if employees will earn leave over time or if you will provide it all at once.



- **Benefit year:** Establish what the **benefit year** will be for tracking leave.
- **Blackout periods:** Decide if there will be any **blackout periods**, when you may restrict planned leave and communicate these periods clearly to employees.
- **Employee notification requirements:** Set the rules for how employees should notify you of planned leave.
- **Tracking leave:** Plan how you will monitor and record earned sick leave usage.
- **Payment method:** Decide the way you will pay employees for their earned sick leave. Must be in regular paycheck or another method they can easily deposit or cash.

- **Leave increments:** Define the increments of leave that employees can take. It can be half an hour, hour, half day, etc. It can be at most one full workday.
- **Waiting period:** Determine if there will be a waiting period before employees can use sick leave, up to a maximum of 120 calendar days.
- **Unused leave:** Decide if employee will carry unused sick leave over or if you will pay it out.
- **Integration with PTO:** If you have a Paid Time Off policy, decide whether earned sick leave will be treated separately or combined. This choice can affect your record-keeping practices.

We recommend you put your earned sick leave policy in an employee handbook, though a handbook is not required.





RECORD KEEPING

Employers must keep records documenting compliance with the Earned Sick Leave Law over the last five years.

Records must include:

- employee hours worked
- accrued/advanced sick time,
- sick time used, paid out, and carried over

Reminder: These records are to be maintained regardless of how an employee is paid, including cash.

Employers must provide NJDOL with access to these records upon request.

Keeping accurate and detailed records is essential for compliance with the Earned Sick Leave Law!

WORKING WITH

PAYROLL SERVICES



You can work with a payroll service, such as a payroll company, an accountant, or a bookkeeper, to help create timesheets, payroll reports, and track earned sick leave.

However, as the employer it is **always your responsibility** to comply with the law.

Payroll support services rely on the information from your records. It is important to accurately track your employees' hours and pay from the start.

Make sure your payroll support service understands New Jersey's laws.



WAGE AND HOUR

AUDITS

- NJDOL enforces the Earned Sick Leave Law. NJDOL must address violations of the law when they happen.
- Audits are usually unannounced. The best way to prepare is to always keep complete and accurate records.
- **Reminder:** You must keep 5 years of earned sick leave records.
- During an audit, NJDOL will check your time and payroll records for compliance.
- It is your responsibility to keep complete records, not the employee.
- If NJDOL finds violations or if you don't cooperate, you might have to pay back wages owed to employees, penalties, and fees.



RETALIATION

You cannot punish employees for:

- Using sick leave
- Filing a complaint
- Talking about their rights

Punishments like threats, firing, cutting hours, or other negative actions can lead to fines and penalties. It's important to create a workplace where employees feel safe to use their rights without fear.

This law includes a “rebuttable presumption.” If an employee reports a problem to NJDOL or talks about their rights and experiences negative employment actions within 90 days, NJDOL assumes it's retaliation. You would need to prove that it wasn't. Make sure any actions taken during this time are well-documented and justified.



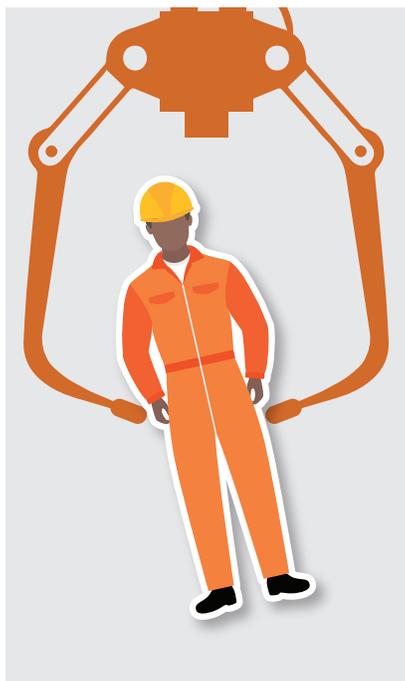
Special protections for immigrant workers

If you disclose or threaten to disclose an employee's immigration status to cover up violations, you could face severe penalties. For more information, visit nj.gov/labor/immigrants.

UNDERSTANDING

EMPLOYEES AND INDEPENDENT CONTRACTORS (1099 WORKERS)

- In New Jersey, most workers are covered by the NJ Earned Sick Leave Law.
- However, the law does not cover independent contractors.
- Independent contractors are sometimes called “1099 workers.” That term comes from the name of a form used to file taxes.
- To correctly decide if someone is an independent contractor, you must use the **“ABC Test,” which is defined in NJ law**, to check if they meet all the requirements.
- If the worker does not meet all the requirements, you cannot classify them as an independent contractor.



What is “Misclassification”?

- “Misclassification” happens when an employer wrongly treats an employee as an independent contractor.
- You can’t call someone an independent contractor simply because you give them a 1099 form. You need to review the ABC test first to make sure the worker is truly independent according to the law.
- Another type of misclassification is when you pay an employee “cash off the books” and don’t make the proper payroll deductions, like for Unemployment Insurance and Temporary Disability Insurance (see nj.gov/labor/ea)
- Misclassification deprives workers of basic rights, protections, and benefits guaranteed to employees.
- Misclassification is illegal, and there are serious penalties for this practice.



PENALTIES FOR

EARNED SICK LEAVE VIOLATIONS AND MISCLASSIFICATION

Earned Sick Leave

- **Fines:** Breaking the law can lead to fines between \$100 and \$1,000. Penalties increase for repeat offenses. If an employee isn't given the Earned Sick Leave they're supposed to get, as described in the law, each week this occurs, and each affected employee counts as a separate violation.
- There are additional penalties if you retaliate.
- **Considerations for Penalties:** When deciding fines, NJDOL considers factors like the seriousness of the violation, past behavior, your intent, the size of your business, and other relevant details.

Misclassification

- **Compensation:** If you owe wages to a misclassified worker, you must pay them the unpaid wages, and you might have to pay up to double the owed amount as extra compensation in liquidated damages.
- **Financial Penalties:** This is a penalty paid to the worker of up to 5% of their past year's gross income.
- **Fines:** Up to \$250 per misclassified worker for the first violation, and \$1,000 for additional violations.
- **Additional Consequences:** These may include stop work orders, loss of operational licenses, and additional state fines and fees.





KEY DEFINITIONS

When it comes to the NJ Earned Sick Leave law, these words and concepts are important to know.

ABC test: Under NJ law, a worker should be considered an employee unless all the following circumstances apply:

- The worker has been, and will keep being, independent. They aren't controlled or directed by the business when doing their job, both according to the contract and in actuality.
- The job they do is either not part of the business's regular activities, or it's done away from the business's usual locations.
- Worker usually works in a trade, occupation, profession, or business on their own, independently from the business they're doing the work for.

Accrued leave: This is one method for calculating how much leave employees have. Employees earn, or "accrue," 1 hour of sick leave per 30 hours worked, up to 40 hours per benefit year.

Advanced leave: You can provide employees with 40 hours of leave up front for them to take later.

Benefit year: A 12-month period for each employee to accrue and use sick leave. The employer determines the benefit year, which is when this 12-month period begins and ends.

Blackout period: Predetermined high-volume periods of business where employers can prohibit employees from using planned sick time. This is only for high volume periods of business or special events where an employee taking planned sick time would cause severe disruption. You must provide notice to your employees of blackout periods ahead of time. An example of a high-volume period for a small business could be Valentine's Day for a florist when there is a predictable increase in customers each year. A special event for companies that make and sell products could be a product launch.

Family member/loved one: A worker can care for anyone they consider to be family.

The law states that "**family**" includes:

- Children (biological, adopted, and foster)
- Parents
- Spouses and partners
- Siblings
- Grandchildren
- Grandparents
- Chosen family



- People related by blood, marriage, or close bonds
- Any person whose close association is the equivalent of family

Minimum wage: The minimum wage for most New Jersey workers has exceeded \$15. Businesses with less than six employees have a different rate. Learn more at nj.gov/labor/minwage.

Paid Time Off (PTO): This is a general term that refers to the employer’s policy for employees to take time off for vacation, personal time, illness, etc.

Rebuttable presumptions: If an employee reports a violation or discusses their rights and experiences adverse employment actions within 90 days, the NJ Department of Labor assumes it is retaliation. As an employer, you must demonstrate that the action was not retaliatory.

Reasonable documentation: You can require documentation when an employee takes leave for 3 or more days in a row. What we consider reasonable documentation in specific situations is defined in the law. This could include notes from a medical provider, school, etc.

Retaliation: Adverse employment actions as a result of employees exercising their right to Earned Sick Leave. It comes in many forms, including firing, disciplinary action, cutting pay or hours.

Waiting period: You can require new hires to wait up to 120 calendar days before they can start to use their leave.

Worker exemptions: Very few workers are not covered under the Earned Sick Leave law.

They are:

- Individuals employed in the construction industry under a union contract
- Certain per diem health care employees
- Public employees who are provided with sick leave at full pay under any other NJ law or rule
- Properly classified independent contractors who do not meet the definition of an employee under NJ law (the “ABC Test”)



WE ARE HERE TO HELP

Email wage.hour@dol.nj.gov with questions.

Learn more and find employer FAQs: mysickdays.nj.gov



MORE EMPLOYER RESOURCES

- ⇒ **Earned Sick Leave webinar:** nj.gov/labor/webinars/
- ⇒ **Other laws and programs:** myworkrights.nj.gov/employers
- ⇒ **Need help with staffing?** Learn about our business service representatives who can help connect you with hiring and training programs: nj.gov/labor/business

