



## **Newark Passes Paid Sick Time Ordinance**

By: [Patrick W. McGovern, Esq.](#) and [Rebecca Fink, Esq.](#)

Beginning on May 29, 2014, all private sector employers must provide paid sick time to their employees who work in Newark, including part-time and temporary employees who work at least 80 hours in a calendar year, subject to the few exceptions described below. The following summarizes the answers to the most commonly asked questions we have received regarding the Ordinance.

### **How Much Sick Time Must I Provide To My Employees under the Ordinance?**

Employers with 10 or more employees working in Newark must provide up to 40 hours of paid sick time each year to each Newark employee, including a part-time and temporary employee who works at least 80 hours in a year. Employers with fewer than 10 employees working in Newark must provide up to 24 hours of paid sick time to a Newark employee, including a part-time or temporary employee who works at least 80 hours in a year.

Persons employed as child care workers, home health care workers or food service workers can accrue up to 40 hours of paid sick time in a calendar year, regardless of how many employees the employer has in Newark.

### **At What Rate Does An Employee Accrue Sick Time?**

Under the Ordinance, an employee accrues one hour of sick time for every 30 hours worked beginning on the first day of employment. However, an employee may not use sick time until after completing 90 days of employment. Beginning on the 91<sup>st</sup> day of employment, an employee may use only the sick time he or she has accrued; however an employer has the discretion to allow employees to use sick time prior to accrual.

### **When Can My Employees Start Using Accrued Sick Time?**

An employee who works in Newark and has already worked for the employer for at least 90 days begins to accrue sick time on May 29, 2014. Upon an employee's request, an employee may use accrued sick time for one of the following events: the employee's health care, the care of a family member who either has a health condition, requires a diagnosis or preventive care for an illness, or is jeopardizing the health of others as a result of exposure to a communicable disease, the closure of the employee's place of business due to a public health emergency, or the care of the employee's child whose school or place of care is closed due to a public health emergency. Employers may require employees to provide advance notice of their intention to use paid sick time when foreseeable, except that no employee shall be required to provide more than seven days' notice. When an employee's use of sick time is not foreseeable, the employer may require that the employee provide notice of the need to use sick time before the beginning of the employee's work shift or work day, or as soon as practicable in the case of emergencies where advance notice is not possible. Employers may request that an employee who used paid sick time to confirm in writing that the sick time was used for one of the events listed above.

The employer has the right to decide whether an employee can use paid sick time in increments of less than one day. Employers may require reasonable documentation from the employee only after the employee uses sick time



for 3 consecutive days or 3 consecutive instances, however employers may not require disclosure of the specific details relating to an employee's or an employee's family member's medical condition.

Employers may not interfere with, restrain or deny any right protected under the Ordinance, and may not retaliate against any employee who attempts to exercise rights under the Ordinance. Use of sick time may not be considered as an absence, lateness or leaving early for purposes of discipline or any other adverse action. An employer may not require an employee using sick time to find a replacement worker to cover his or her shift.

### **Do I Have to Pay Out or Carry Over Accrued, Unused Sick Time?**

Employers must carry over up to 40 hours of accrued but unused sick time to the next calendar year unless the employer pays out accrued, unused sick time at the end of the calendar year in which the time was accrued. Employers are not required to carry over more than 40 hours of accrued but unused sick time, and employees may use no more than 40 hours of sick time in any calendar year, regardless of how much carryover they have. For example, an employee who accrues 40 hours of sick time in 2014 but uses only 10 hours in 2014 can carry over the remaining 30 hours into 2015. If in 2015 the same employee accrues another 40 hours of paid sick time, the employee still can use at most 40 hours of paid sick time in 2015. If the same employee actually uses only 10 hours of sick time in 2015, he or she can carry over only 40 hours to the next year. The balance of the accruals is lost. An employer is not required to pay out accrued, unused sick time at the time of employment termination.

### **What if My Employees Are Covered By A Collective Bargaining Agreement?**

Members of a construction union that are covered by a collective bargaining agreement are excluded from the Ordinance and as a result do not accrue sick time. The Ordinance defines a construction union as any labor organization that represents "employees involved in the performance of construction, reconstruction, demolition, alteration, custom fabrication, or repair work and who are enrolled or have graduated from a 'registered apprenticeship program.'"

For all other employees covered by a labor agreement in effect on May 29, 2014, the Ordinance does not take effect until that labor agreement expires. A Union and an employer may waive some or all of the Ordinance's requirements by including clear waiver language in the labor agreement.

### **What if My Employees Are Exempt from Overtime Under the Fair Labor Standards Act?**

Private sector employees who work in Newark at least 80 hours in a year are covered by the Ordinance even if they are exempt. Exempt employees who work more than 40 hours per week are assumed to work just 40 hours per week for purposes of accruing paid sick time. An exempt employee whose regular work week is fewer than 40 hours will accrue sick time based on actual hours worked.

### **Do I Have to Provide Notice to my Employees?**

Yes, a covered employer must notify new hires in writing when they start work of their rights under the Ordinance. Employers must provide employees already employed on the effective date of the Ordinance with



written notice as soon as practicable and display a poster in a conspicuous and accessible place in each business establishment where its Newark employees work.

### **Are There Record Keeping Requirements?**

Yes. The Ordinance requires employers with Newark employees to retain records documenting the hours worked and paid sick time taken by its Newark employees. The Ordinance does not specify how long these records must be retained. Employers must also allow the Newark Department of Child and Family Well-Being access to these records. Failure to maintain records creates a rebuttable presumption that the employer has violated the Ordinance.

### **What If I Already Have A Paid Sick Time or Leave Policy?**

Employers that already have a paid sick time or leave policy that provides at least an equal amount of paid sick time for the same qualifying events covered by the Ordinance are not required to provide more paid sick time. However, these employers should have existing paid sick time or leave policies reviewed by counsel to ensure that all requirements of the Ordinance are met.

### **Can I Be Fined For Violating The Ordinance?**

Yes. Employers that violate the Ordinance face a fine of up to \$1,000, imprisonment not to exceed 90 days, and/or up to 90 days of community service per violation. Each day that the employer violates the Ordinance constitutes a separate offense. In addition to any fines, an employer that violates the Ordinance may be required to make restitution to the employee in the amount of any paid sick time unlawfully withheld. An employee who believes his employer has violated the Ordinance may complain to the Newark Department of Child and Family Well-Being and/or bring a claim in Newark Municipal Court.

### **Can I Treat Sick Time Under the Ordinance As Leave Taken Under the Family and Medical Leave Act and the New Jersey Family Leave Law?**

Not necessarily. The events that create rights to leave under the three sets of laws are not identical. Also, an employer may be covered by the Ordinance but not covered by the FMLA. Be sure to have your leave policies reviewed by counsel to ensure compliance with all applicable laws.

### **How Can I Make Sure That I Am In Compliance?**

The attorneys at Genova Burns Giantomasi Webster are available to assist employers in their compliance efforts, including reviewing and revising current policies providing for paid sick leave to ensure that they satisfy Newark's requirements and employers are not committing to more paid sick time than is legally required. For more information on the new Ordinance, or for information on paid sick time laws in other jurisdictions, please contact [Patrick W. McGovern](mailto:pmcgovern@genovaburns.com), [pmcgovern@genovaburns.com](mailto:pmcgovern@genovaburns.com), or [Rebecca Fink](mailto:rfink@genovaburns.com), [rfink@genovaburns.com](mailto:rfink@genovaburns.com), in the firm's [Labor Group](#).



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