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Sick Pay Laws to Date

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States are free to draft sick pay laws that uniquely and diversely affect employers. Current sick pay laws may have common characteristics, but varied application. To date, there are six States and twenty municipalities with sick pay laws. In addition, the President signed Executive Order 13706, which requires entities contracting with the Federal government to provide employees with up to seven days of paid sick leave annually. The result is a hodgepodge of regulation that creates burdensome administration and increased expense for employers.

New Jersey

In 2014, Senate Bill 785 was introduced to mandate sick leave for employees. Bill 785 was amended various times, but never passed. It was re-introduced as Bill 799 on January 12, 2016. Since January the Bill has been amended, but has not yet passed. While Bills 785 and 799 have been contested and criticized for requiring sick leave State-wide, ten (10) municipalities within the State of New Jersey have passed sick pay laws applicable to each municipality.

The ten municipalities are Bloomfield, NJ; East Orange, NJ; Elizabeth, NJ, Irvington, NJ, Jersey City, NJ, Newark, NJ, Passaic, NJ, Paterson, NJ, Trenton, NJ, and Montclair, NJ.

The sick pay laws of these municipalities apply to all private employers and exclude federal and state employers and members of a union that have enrolled or graduated from a registered apprenticeship program covered by a Collective Bargaining Agreement (“CBA”). The municipalities provide up to 40 hours of sick leave annually. An employee is permitted to use sick leave earned after 90 days of employment for medical diagnosis, care, and/or treatment of their own or their family member. Accrual provisions apply as follows:

Specific Requirements of Municipalities – New Jersey		
Employer Size	Accrual	Not to Exceed
10+ Employees	1 hour of paid sick time for every 30 hours worked	40 hours per year
< 10 Employees	1 hour of paid sick time for every 30 hours worked	24 hours per year
Child Care Worker, Home Health Care Worker, Food Service Worker (Regardless of Hours Worked)	1 hour of paid sick time for every 30 hours worked	40 hours per year

Employers must provide advance notice to employees of the sick leave provisions applicable to each municipality. In addition, employers with a Paid Time Off (“PTO”) policy may continue to use the policy so long as the accrual meets the municipal requirements.

New York City

In March 2014, Mayor de Blasio signed the New York City Earned Sick Time Act (“ESTA”), which mandates sick pay for employees of private employers and excludes employees of federal and state governments. In addition, any employee covered by a Collective Bargaining Agreement (“CBA”) in effect on April 1, 2014 will be covered by ESTA beginning the date the CBA terminates.

ESTA applies to employees working in the City of New York, even if the employee lives in another State or if the

employer is headquartered in another State. Any employer with five or more employees, working 80 or more hours a year, must provide paid sick leave. Employers with less than five employees must provide unpaid sick pay leave. Finally, any employer with one or more domestic workers who have worked for the employer for at least a year and who work more than 80 hours a calendar year must provide paid sick leave.

ESTA provides that an employee can accrue up to 40 hours of sick leave during a calendar year or 1 hour for every 30 hours worked. Once sick leave is earned, the employee may begin to use sick leave after 120 days of employment. ESTA permits a maximum carryover of 40 hours per year, available for immediate use.

Employers must also comply with additional recordkeeping and disclosure requirements, including:

1. Employer must have a written policy outlining the sick leave policy;
2. Any advance requirement for sick leave must be outlined in a sick leave policy;
3. Employer must distribute the sick leave policy to employees either by hand-delivery, mail, e-mail, or by posting the notice in a publicly accessible and visible place;
 - a. Additional documents to be distributed with Sick Leave Policy: 1) Employer’s Calendar Year; 2) Right to be Free from Retaliation; and 3) Right to File a Complaint.

An employer may not ask the employee the reason for the leave, but may request 1) a doctor’s note; 2) date of clearance to return to work; 3) certification of sick leave use. Finally, employers must keep records that show the

leave provided, the leave requested, and any substantiation provided by employees.

Other States with Sick Pay Laws

As previously mentioned, six other States have sick pay laws, which provide for varied accruals sick leave accruals and maximum caps.

The six States are: 1) California; 2) Connecticut; 3) District of Columbia; 4) Massachusetts; 5) Oregon; and 6) Vermont. The requirements can be summarized as follows:

Other States with Sick Pay Laws			
State	Eligibility	Accrual	Not to Exceed
California	EE must work 30+ days Covered after 90 days of employment	1 hour of paid sick time for every 30 hours worked	6 days / 48 hours Cannot take more than 3 days / 24 hours annually
Connecticut	Covers service workers for ERs with 50+ employees Required 680 hours of employment		5 days / 40 hours
District of Columbia	After 90 days of employment	1 hour of paid sick time for every 37 hours worked (ERs with 100+ EEs)	7 days / 56 hours (ERs with 100+ EEs)
Massachusetts	Covered after 90 days of employment ERs with 10 or less EEs have to provide unpaid sick leave		5 days / 40 hours
Oregon	Covered after 90 days of employment ERs with less than 10 EEs only have to provide unpaid sick leave	1 hour of paid sick time for every 30 hours worked -OR- 1.5 hour of paid sick time for every 40 hours worked	5 days / 40 hours
Vermont	EEs working at least 18 hours per week during the year	1 hour of paid sick time for every 52 hours worked	3 days/24 hours annually until 12/31/2018 5 days/40 hours annually for subsequent years
Municipalities	Emeryville, CA Oakland, CA San Francisco, CA Montgomery County, MD Philadelphia, PA Pittsburgh, PA Seattle, WA Spokane, WA Tacoma, WA	Varied	Varied