

General Information about Earned Sick Leave

What is the New Jersey Earned Sick Leave Law?

It is a 2018 state law that requires NJ employers of all sizes to provide workers with up to 40 hours of paid sick time per year to care for themselves or a family member. See below for additional uses of Earned Sick Leave.

I've never had paid sick time from my employer. Does this mean I get it now?

Most likely yes, because most New Jersey workers are eligible. The law covers full-time, part-time, and temporary employees for businesses of all sizes, nonprofits included. Workers in service-sector industries such as restaurant, food service, childcare, and retail are covered too.

How much sick time do I get?

You accrue one hour of paid sick time for every 30 hours you work, up to 40 hours per year. Your employer may also advance the 40 hours or a prorated amount during the benefit year.

Can I take my paid sick time now?

You can begin taking earned sick leave on February 26, 2019, or 120 days after your first day of employment, whichever is later. The 120 day "waiting period" may be imposed by your employer, or your employer may let you use your sick time sooner.

What if I already get paid time off (PTO) or vacation days?

It's possible that an employer's PTO policy could meet the minimum requirements of the law and they may not have to provide additional time. However, the time must be able to be used as specified under the law and the policy must meet or exceed all requirements of the law. See "Guidance for Earned Sick Leave Policies" at mysickdays.nj.gov.

Who Is Covered Under the Earned Sick Leave Law

Is there anyone who does not get paid sick under the law?

The only employees not covered under the law are union construction workers under contract pursuant to a collective bargaining agreement, per diem health care workers, and public employees who already receive paid sick time.

Does the sick leave law apply to undocumented immigrants?

Yes. Earned Sick Leave, like all NJ wage and hour laws, applies to all NJ workers, regardless of documentation status.

Does the sick leave law apply to domestic workers?

Yes. Earned Sick Leave, like all NJ wage and hour laws, applies to all NJ workers.

I'm a temp worker. How do I get earned sick leave?

Your earned sick leave will accrue on the basis of the total time you work on assignment with a temporary help service firm, not separately for each client firm to which you are assigned. The temporary help service firm is responsible for paying you for your earned sick leave.

I live in New Jersey but I work out of state. Do I get paid sick under the law?

It depends on how much time you spend working in New Jersey. If you routinely perform some work in New Jersey and your base of operations or the place from which such work is directed and controlled is in New Jersey, then you are entitled to receive earned sick leave under the Earned Sick Leave Law.

My employer is located in another state but I work in New Jersey. Do I qualify for paid sick under the law?

Yes.

I believe my employer misclassified me as an independent contractor and I'm entitled to sick leave. Can I file a complaint with NJDOL?

Yes, employees who believe they have been misclassified may file a complaint with NJDOL. NJDOL will investigate and make a determination as to whether or not the individual is covered by the Earned Sick Leave Law.

Sick Leave Accrual

What happens to my earned sick leave at the end of the benefit year?

Up to 40 hours of your accrued sick leave can carry over into the next year, or your employer can buy it back from you. However, your employer is only required to let you use up to 40 hours of sick leave per benefit year.

I'm a seasonal worker. I'm worried that when the season ends, I'll have accrued sick that I haven't used. What will happen to it?

Under the law, if you are terminated, laid off or furloughed, and then rehired or reinstated within six months, you get to keep your accrued sick time.

The company I work for is now under new ownership. What happens to my accrued sick time?

If your company is bought, is substantially in the same business as before, and your employment continues with the new owner, you get to keep your accrued sick time.

Using Earned Sick Leave

What can I use sick time for?

You can use earned sick leave to care for yourself or a family member. You can use it to take time off from work when:

- **You** need diagnosis, care, treatment, or recovery for a mental or physical illness, injury, or health condition; or you need preventive medical care.
- You need to care for a **family member** during diagnosis, care, treatment, or recovery for a mental or physical illness, injury, or health condition; or your family member needs preventive medical care.
- You or a family member **have been the victim of domestic violence or sexual violence** and need time for treatment, counseling, or to prepare for or attend legal proceedings.
- You need to attend **school-related conferences, meetings, or events** regarding your child's education; or to attend a school-related meeting regarding your child's health.
- Your employer's business **closes due to a public health emergency** or you need to care for a child whose school or child care provider closed due to a public health emergency.

Who is considered a family member under the law?

The definition of family under the law is generous. The law recognizes the following as family:

- Child (biological, adopted, or foster child; stepchild; legal ward; child of a domestic partner or civil union partner)
- Grandchild
- Sibling
- Spouse
- Domestic partner or civil union partner
- Parent
- Grandparent
- Spouse, domestic partner, or civil union partner of an employee's parent or grandparent
- Sibling of an employee's spouse, domestic partner, or civil union partner

- Any other individual related by blood to the employee
- Any individual whose close association with the employee is the equivalent of family

Can I use sick leave for doctor, dentist, or eye doctor appointments?

Yes. Employees may use sick leave for appointments when they require treatment for a condition or for preventive medical care.

What is “preventive medical care”?

Preventive medical care, or wellness care, typically is routine health care that includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems.

Is my employer allowed to ask me to find a replacement worker for my shift when I need to use sick leave?

No, it is against the law for an employer to require an employee to find a replacement so the employee can take earned sick leave.

What if my employer punishes me for asking to take my sick time or using my sick time?

That is against the law. You may contact NJDOL to file a complaint. The law contains strong anti-retaliatory provisions including penalties and fines.

Can I work additional hours or swap shifts instead of using sick leave?

Yes, but with your employer’s consent. However, your employer cannot require this, or require you to use earned sick leave.

Earned Sick Leave for Domestic and Sexual Violence

I need to use my earned sick leave because I’m a victim of domestic or sexual violence / my family member is a victim. What are the allowable uses?

You can use earned sick leave for yourself or your family member for any of the following:

- medical attention needed to recover from physical or psychological injury or disability caused by domestic or sexual violence
- services from a designated domestic violence agency or other victim services organization
- psychological or other counseling
- relocation
- legal services, including obtaining a restraining order or preparing for, or participating in, any civil or criminal legal proceeding related to the domestic or sexual violence

Are there any privacy or confidentiality protections in the law?

Your employer can only request reasonable documentation as to why you took sick leave if you take more than 3 days of sick leave in a row or if you want to use the leave on dates your employer has specified as high-volume periods or special events. Under the law, your employer may not request that your *medical* documentation specify the medical reason for your leave. Any information provided to your employer must be kept confidential.

Providing Notice and Documentation for Sick Leave

Can my employer require notice from workers who want to use sick time?

An employer can require up to seven days' advance notice of your intention to use earned sick leave, as long as (1) you can reasonably anticipate the need for leave – for example, a doctor's appointment scheduled far in advance and (2) the employer has explained that notice requirement to you in advance. If it is not possible to anticipate your need for leave – for example, a sudden illness occurs – your employer may require notice as soon as is feasible. An employer has the right to prohibit you from using foreseeable earned sick leave during high-volume periods or special events, but the employer must provide reasonable notice of those dates to employees.

Can my employer ask for documentation to prove why I needed sick time?

Your employer can only require documentation if you are taking more than 3 consecutive days of earned sick leave or you want to use the leave on dates your employer has specified as high-volume periods or special events. However, it's against the law for your employer to ask for your documentation to specify the reason for your leave. In addition, if you disclose the reason for your sick leave, your employer must keep that information confidential.

I had to take 3 days in a row of sick leave and my employer is asking for documentation. What do I provide?

For medical leave lasting 3 days in a row or more, health care documentation signed by a health care professional is sufficient. For domestic or sexual violence, medical documentation, a law enforcement agency record or report, a court order, certification from a certified domestic violence specialist or a representative of a domestic violence or victim services agency, or other documentation or certification provided by a social worker, counselor, clergy member, shelter worker, health care professional, attorney, or other professional who has assisted the employee or family member is sufficient. If your child's school or day care is closed due to a public health emergency, a copy of the order of the public official or the determination by the health authority qualifies. To attend a child's school-related meeting, conference, or event, tangible proof is required.

REMEMBER: It's against the law for your employer to ask your healthcare provider to specify the medical reason for your leave in the documentation. In addition, if you disclose the reason for your sick leave, your employer must keep that information confidential.

Earned Sick Leave Pay

I get paid by commission. What will my sick leave pay rate be?

Whether your pay is base wage plus commission or commission only, your rate of earned sick leave pay is the hourly base wage or the state minimum wage, whichever is greater.

I'm a server/bartender in a restaurant and a lot of my pay is from tips. What will my sick leave pay rate be?

Your employer should use a 7-day lookback to calculate your rate of pay. Add together your total earnings, exclusive of overtime pay, for the seven most recent workdays. Divide that sum by the total hours of work during that seven-day period, and that is your sick leave hourly pay rate.

Can my employer deduct money from my wages to cover the cost of earned sick leave?

No. An employer that is required to provide earned sick leave may not require an employee to pay for all or part of that earned sick leave.

The length of my work shift varies. How should my employer determine my amount of earned sick leave used and the pay rate?

For work or shifts of an indeterminate length (e.g. shift until closing or a job that lasts until the required work is completed), employers should base the hours of earned sick leave used and paid on the hours worked by a replacement employee for the same shift. If there is no replacement employee, the hours of earned sick leave should be based on the hours worked by the employee or a similarly situated employee in the same or similar shift in the past.

Please visit mysickdays.nj.gov for more information, or contact NJDOL Wage and Hour at 609-292-2305 between 8:30 am and 4 pm.

To file a wage claim visit: [Wage & Hour Compliance](#)