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“The Payroll Experts”

NEW JERSEY ENACTS LAW REQUIRING EMPLOYERS TO PROVIDE PAID SICK LEAVE (PSL)

On May 2, 2018, NJ Governor Phil Murphy signed a bill requiring employers of any size to provide paid sick leave (PSL). The law will take effect October 29, 2018.

Employees will accrue one hour of paid sick leave for every 30 hours worked, up to 40 hours in a year. Employees will be eligible to use accrued paid sick leave on the 120th calendar day after employment begins, unless an employer agrees to an earlier date. PSL must be paid out at the employee’s regular rate.

As an alternative to the accrual, employers may opt to provide employees with the full amount of paid sick leave for a benefit year on the first day of the benefit year. A benefit year is defined as any 12 consecutive month period pre-defined by the employer. Employers are not required to allow employees to use more than 40 hours of PSL in a benefit year.

If an employer has an existing paid time off (PTO) plan, it may satisfy the law’s PSL requirement. However, employers may need to change their policies in order for the PTO to be in compliance with the new law.

Whether employers comply with the new law through a separate PSL policy or a PTO plan, employees are entitled to carry over at least 40 hours per year. As an alternative to the carryover, an employer may offer a payout for the full amount of unused time or 50%. However, the employee can decline this offer and the full balance of any unused time must be carried over.

There are still questions involving certain aspects of the implementation of the law. For instance, there are several unanswered questions as it concerns the carryover policy. Law makers are meeting in early November in the hopes of clarifying such questions.

The bill explicitly excludes employees in the construction industry employed under a collective bargaining agreement, per diem healthcare employees, and public employees who already have sick leave benefits. All other employees, whether part time or full time are covered under the PSL law. There is no small business exclusion.

Employers will be required to post a notice of the law in a conspicuous place and provide a notice to all employees within 30 days after it is issued by the Department of Labor and Workforce Development (DOLWD). The DOLWD just issued the notice this month. You may download from their website at:

https://www.state.nj.us/labor/forms_pdfs/mw565sickleleaveposter.pdf

The PSL law will be enforced by the New Jersey Department of Labor and Workforce Development. Employers are required to keep records for five years documenting hours worked by employees, earned sick leave accrued, used, paid, paid out and/or carried over by/to employees. There will be fines for non-compliance of \$250 for a first offense and \$500 for subsequent offenses. For “willful violations,” there can be penalties ranging from \$100 to \$1,000 plus 10-90 days in prison. These fees would be in addition to any remedies imposed by a judge if a private lawsuit is brought against an employer.

New Jersey is the 10th state to enact PSL requirements. The other states include Arizona, California, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island (effective July 1, 2018), Vermont, and Washington. This law preempts any of the existing 13 NJ local city paid sick leave requirements. The state law also prevents additional municipalities from enacting future PSL ordinances.

For more information, please go to <http://www.njleg.state.nj.us/2018/Bills/PL18/10 .PDF>

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