

## Jersey City, New Jersey, Passes Law Requiring Paid Sick Leave

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On September 25, 2013, the City Council of Jersey City, New Jersey, passed Ordinance 13.097 (“Ordinance”), which requires private employers conducting business in Jersey City with 10 or more employees in Jersey City to provide employees with *paid* sick leave. Private employers conducting business in Jersey City with fewer than 10 employees in Jersey City must provide *unpaid* sick leave. The Ordinance seeks to provide employees with time off to attend to their own health care and the health care of family members.

The Ordinance goes into effect on January 23, 2014, for employees who do not work under a collective bargaining agreement. For those who do, the Ordinance becomes effective at the expiration of the current agreement.

Under the Ordinance, the term “employer” is defined by reference to *N.J.S.A. 34:11-56a1(g)* to include “any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee,” and excludes government employers. “Employee” is defined to include any individual employed by an employer, franchise, or business owner located in Jersey City who works at least 80 hours a year in the City. The Ordinance defines “family member” broadly to include a child, sibling, parent, or grandparent of the employee or of his or her spouse, domestic partner, or civil union partner.

Employees accumulate sick leave at a rate of one hour for each 30 hours worked, up to a maximum of 40 hours, beginning on their first day of work. Employees are not, however, entitled to use accrued time until their 90th day of employment. Up to 40 hours of accrued, unused sick leave will carry over to the following calendar year, but employers are not required to allow employees to use more than 40 hours of accrued sick leave in any given year. Employees are not entitled to reimbursement for accrued, unused sick leave upon separation from the employer. If, however, an employee becomes reemployed by the employer within six months of the termination of his or her employment, the employee is entitled to reinstatement of accrued, unused sick time that was accrued at the time of the separation. Additionally, an employer with a paid leave

policy (e.g., sick days, vacation, and PTO) that provides an amount of leave sufficient to meet the requirements of the Ordinance is not required to provide additional paid sick leave.

Other aspects of the Ordinance include the following:

- Employers may not require an employee to find a replacement worker to cover the hours during which the employee will be absent.
- For sick leave of more than three consecutive days, employers are permitted to request reasonable documentation to support the leave request, including documentation signed by a health care professional indicating that the leave is necessary. (Such documentation is to be maintained confidentially, unless disclosure is to the affected employee or with his or her permission.)
- Employers are prohibited from interfering with, or retaliating against, employees for exercising their rights under the Ordinance.

The Ordinance also imposes notice, poster, and recordkeeping obligations on the employer. For instance, employers must provide new hires and existing employees (as soon as practicable) with written notice of their rights under the Ordinance and display in a conspicuous location a poster regarding sick leave benefits. The form of the notice and poster will be provided by the Jersey City Department of Health and Human Services (“Department”). The Department is also empowered to audit employers and review and adjudicate complaints. Violations carry fines up to \$1,250 and/or a period of community service; the Ordinance also creates a private cause of action for aggrieved employees.

### **What Employers Should Do Now**

- Review leave policies to ensure compliance with at least the minimum requirements of the Ordinance.
- If leave policies are not sufficient as written, modify policies before the Ordinance takes effect.
- Watch for publication by the Department of the notice to be distributed and the poster to be displayed to employees beginning in January 2014.
- Determine which employees are covered by the Ordinance and ensure that they receive the required notice and that the required poster is displayed in a conspicuous place as of January 23, 2014.
- Ensure that time and payroll records are accurate and sufficiently show the hours worked and sick time taken by employees.

- Train managers and human resource personnel about the Ordinance and its non-retaliation provisions.

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