

# Frequently Asked Questions About the New Jersey Paid Sick Leave Law, Part I

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Monday, October 8, 2018

The [New Jersey Paid Sick Leave Law](#) (PSLL) goes into effect on October 29, 2018. We have received hundreds of questions in the last few weeks from employers seeking guidance on what they must do to comply with the law in advance of its looming effective date.

This is part one in a three-part series answering some of these frequently asked questions. Below we address critical questions, such as who is covered by the law, how much paid sick leave do employees receive, how do employees earn sick leave, and for what purposes can employees use sick leave? Part two will cover payment for sick leave, employee advance notice and documentation requirements, limitations on the use of sick leave, and carryover requirements. The final segment, part three, will dive deeper into the details of the law, examine the law's interplay with PTO policies and local paid sick leave laws, explain employers' recordkeeping and notice posting and distribution requirements, and explain penalties for violating the law.

Many of the answers provided are based on [proposed regulations](#) recently issued by the New Jersey Department of Labor and Workforce Development (NJDOLE). Some of these answers could change when the final regulations are issued.

## **Who is covered by the law?**

### **1. Which employers are covered?**

- All private sector employers with employees in New Jersey are covered, including temporary help service firms.
- There is no small-employer exemption, and out-of-state employers with only a few employees in New Jersey are covered.

### **2. Which employees are covered?**

- All private sector employees who perform service for compensation in New Jersey are covered, except for (1) employees in the construction industry who are covered by a collective bargaining agreement (CBA) and (2) per diem healthcare employees (as defined in the law).
- Both full-time and part-time employees are covered.
- Both exempt and nonexempt employees are covered.

### **3. Does the law apply to employees covered by a CBA outside the construction industry?**

- Yes, eventually. Employees covered by a CBA on the date the law goes into effect are not covered by the law until the CBA expires. Upon expiration of the CBA, those employees become covered by the law.
- Additionally, however, the law states that employees “may waive the rights or benefits provided under this act during the negotiation of a collective bargaining agreement.” This appears to mean that employers and unions can agree that employees covered by a union contract will not receive all or any of the sick leave required by the law (presumably in exchange for some other benefit).

### **4. Are independent contractors entitled to sick leave?**

- No. Workers properly classified as independent contractors are not covered.
- The test to determine whether a worker is an employee (and therefore covered under the law) or an independent contractor (and therefore not covered) will be [the “ABC” test](#) currently used under the state’s unemployment compensation law.

## **How much sick leave do employees receive?**

## 1. **How much sick leave must employees receive?**

- Employers must provide each employee up to 40 hours of paid sick leave each benefit year.
- An employer is entitled to establish the applicable 12-month period—known as the benefit year—during which an employee’s sick leave is accrued and used (e.g., calendar year, fiscal year, etc.).
- An employer must establish a single benefit year for all employees. It is unclear, however, if this means that an employer cannot use an “anniversary year” as the benefit year.

## 2. **Can an employer change the benefit year once it has been established?**

- Once established, the benefit year cannot be changed without notifying the NJDOL (and providing detailed specified information). The NJDOL can deny the change if it determines the change is intended to evade the law’s accrual and use requirements.

## How do employees earn sick leave?

### 1. **Do employees receive all 40 hours of sick leave at the start of the year?**

- Employers are entitled to choose whether to use the “accrual method” or the “front-load method” (also known as the “advancing method”) to grant sick leave to employees.
  - Under the **accrual method**, employees must earn 1 hour of paid sick leave for every 30 hours worked, beginning on the first day of the benefit year, up to a maximum of 40 hours per year.
  - Under the **front-load method**, employers simply grant the full 40 hours of sick leave on the first day of the benefit year. The front-load method allows for more simplified bookkeeping, but it also allows for immediate accrual and use of paid sick leave.
- Regardless of the method used, employers are not required to allow employees to accrue or use in any one benefit year, or carry over from one benefit year to the next, more than 40 hours of sick leave.

### 2. **Can employers impose a waiting period before employees can use accrued sick leave?**

- **As to new employees (i.e., employees hired on or after October 29, 2018)**, employers can impose a 120-day waiting period before a new hire can use his or her accrued sick leave. Thus, while new employees must begin to **accrue** sick leave upon hiring, they can be required to wait 120 days before **using** their accrued leave.

- **As to existing employees (i.e., employees hired before October 29, 2018)**, the PSL and the proposed regulations have contradictory language about the waiting period:
  - The PSL simply states that employees hired before the effective date of the PSL (i.e., before October 29, 2018) can use their sick leave accrued under the PSL beginning 120 days **after their date of hire**. This means that:
    - Employees hired before June 30, 2018, can use their accrued sick leave as soon as they begin to accrue it under the PSL; and
    - Employees hired between July 1, 2018 and October 28, 2018, can use their accrued sick leave once they have been employed for 120 days (e.g., an employee hired on September 1, 2018, can begin to use sick leave accrued under the PSL on December 30, 2018).
  - However, the proposed regulations state that employees cannot use their accrued sick leave under the PSL until 120 days after the effective date of the PSL (i.e., until February 26, 2019) or 120 days after their date of hire, **whichever is later**. This suggests that all employees hired before October 29, 2018, regardless of their hire date, must wait 120 days (i.e., until February 26, 2019) until they can use their sick leave accrued under the PSL.
  - The [required notice](#) prepared by the NJDOL that must be posted and distributed simply states, “You can begin using earned sick leave accrued under this law 120 days after you begin employment.” Accordingly, we suspect that the language in the proposed regulations is incorrect and that the interpretation above applies, again:
    - Employees hired before June 30, 2018, can use their accrued sick leave as soon as they begin to accrue it under the PSL.
    - Employees hired between July 1, 2018 and October 28, 2018, can use their accrued sick leave once they have been employed for 120 days (e.g., an employee hired on September 1, 2018, can begin to use sick leave accrued under the PSL on December 30, 2018).

### 3. **Do employees hired mid-year receive only a prorated amount of sick leave?**

- No. If an employer uses the front-load method, the employee must receive 40 hours of sick leave on the date his or her employment commences. If an employer uses the accrual method, the employee must start accruing sick leave on the date his or her employment commences (which may result in the employee accruing less than 40 hours of paid sick leave before the start of the new benefit year, depending on the employee’s date of hire).
- However, as noted above, an employer may impose a 120-day waiting period before a new employee may begin to **use** his or her accrued sick leave (whether

the employer uses the front-load or accrual method).

4. ***Do part-time employees receive only a prorated amount of sick leave?***

- No. If an employer uses the front-load method, the part-time employee must receive 40 hours of sick leave, just like a full-time employee. If an employer uses the accrual method, the part-time employee accrues at the same rate as a full-time employee, but of course it will take the part-time employee longer to accrue 40 hours of sick leave.

5. ***Can an employer use the accrual method for new hires and then switch to the front-load method at the start of the new benefit year?***

- Yes. Nothing in the law prohibits that. Many employers have indicated that they intend to use the accrual method for new employees during their year of hire (e.g., if employee is hired in August, from August to December) and then switch over to the front-load method at the start of the new benefit year (e.g., on January 1).

6. ***Can an employer use the accrual method for some employees and the front-load method for other employees?***

- Yes. Nothing in the law prohibits that. For example, an employer can use the accrual method for nonexempt employees and the front-load method for exempt employees. Or, for example, an employer can use the accrual method for part-time employees and the front-load method for full-time employees.

7. ***What if an employee works in New Jersey and another state?***

- The PSLI does not address this, but presumably, such an employee is entitled to accrue sick leave based only on the hours he or she actually works in New Jersey.

8. ***How do temporary employees working for a temp agency earn sick leave?***

- Paid sick leave accrues on the basis of the total time worked on assignment with a temporary help service firm, not separately for each client firm to which the employee is assigned.
- The sick leave accrual applies only to assignments worked in New Jersey.
- The temp agency employer is responsible for the tracking and payment of paid sick leave, not the client to which the employee is assigned.

9. ***What does “hours worked” mean if an employer uses the accrual method?***

- As stated above, if an employer uses the accrual method, employees must earn

1 hour of sick leave for each 30 hours worked.

- The PSSL does not define “hours worked,” but presumably, an employer is not required to count either paid or unpaid time off hours (such as vacation, FMLA leave, sick days, etc.).
- The proposed regulations purport to clarify this by stating that “hours worked” shall be defined as used in New Jersey’s existing wage and hour regulations under New Jersey Administrative Code 12:56-5. However, the existing wage and hour regulations do not include an actual definition of “hours worked,” but instead refer to various situations where compensation may be owed, such as on-call time.

10. ***Is an employer required to record the actual hours worked by exempt employees if the employer uses the accrual method?***

- The PSSL states that employers must keep records documenting the hours worked and the paid sick time earned and used by each employee for at least five years.
- However, the proposed regulations clarify that an employer is ***not required*** to maintain (or retain) records of the hours worked by exempt employees if (1) the employer uses the front-load method or (2) if the employer presumes for purposes of the accrual method that the employee works 40 hours per week.

**What are an employer’s obligations during the “gap” between the effective date of the law (October 29, 2018) and the start of the new benefit year (January 1, 2019, for many employers)?**

- Many employers have asked for clarification about employees’ rights to accrue and use sick leave between the date the PSSL goes into effect (October 29, 2018) and the date they establish as the benefit year for their employees (which for many employers will be January 1, 2019). Unfortunately, the answer is unclear. Neither the law itself nor the proposed regulations provide definitive guidance, and, in fact, there is some contradictory language. A primary area of uncertainty is whether an employer with an existing sick leave policy that complies with the requirements of the PSSL has any obligations before the start of the next benefit year. Below are two alternative interpretations of an employer’s obligations in the gap between the law’s effective date and the start of the next benefit year.

1. ***More conservative interpretation: An employer’s existing sick leave policy does not impact its obligations in the gap***

- All employees must begin to accrue sick leave under the PSSL, or receive a front-load of 40 hours of sick leave, on October 29, 2018.
- The date that employees may begin to use their accrued or front-loaded sick leave is unclear because of inconsistent language between the PSSL and the proposed regulations. As stated above:

- The PSSL simply states that employees hired before its effective date (i.e., before October 29, 2018) can use their sick leave accrued under the PSSL beginning 120 days **after their date of hire**. This means that:
  - Employees hired before June 30, 2018, can use their accrued sick leave as soon as they begin to accrue it under the PSSL; and
  - Employees hired between July 1, 2018 and October 28, 2018, can use their accrued sick leave once they have been employed for 120 days (e.g., an employee hired on September 1, 2018 can begin to use sick leave accrued under the PSSL on December 30, 2018).
- However, the proposed regulations state that employees cannot use their accrued sick leave under the PSSL until 120 days after the effective date of the PSSL (i.e., until February 26, 2018), or 120 days after their date of hire, **whichever is later**. This suggests that all employees hired before October 29, 2018, regardless of their hire date, must wait 120 days (i.e., until February 26, 2019) until they can use their sick leave accrued under the PSSL.
- The **required notice** prepared by the NJDOL that must be posted and distributed simply states, “You can begin using earned sick leave accrued under this law 120 days after you begin employment.” Accordingly, we suspect that the language in the proposed regulations is incorrect and that the interpretation above applies, again:
  - Employees hired before June 30, 2018, can use their accrued sick leave as soon as they begin to accrue it under the PSSL; and
  - Employees hired between July 1, 2018 and October 28, 2018, can use their accrued sick leave once they have been employed for 120 days (e.g., an employee hired on September 1, 2018, can begin to use sick leave accrued under the PSSL on December 30, 2018).
- Additionally, during the 120-day waiting period, employees are entitled to use any sick leave they accrued under the employer’s policy (or a local sick leave law) prior to October 29, 2018.

2. ***Less conservative interpretation: An employer’s existing sick leave policy, if compliant with the PSSL, satisfies the employer’s obligations in the gap***

- A less conservative interpretation is that an employer’s existing sick leave policy, if compliant with the requirements of the PSSL, will satisfy its sick leave accrual obligations to existing employees during the gap.
- More specifically, when an employer’s existing sick leave policy is compliant with the PSSL (i.e., it either (1) front-loads at least 40 hours of paid sick leave on the employee’s date of hire or (2) provides for accrual of paid sick leave at a rate at least as generous as what the PSSL requires [1 hour for every 30 hours worked]), then the employer may be able to simply continue to follow its

existing policy with respect to accrual of sick leave until the start of the next benefit year. In other words, employees do not accrue any additional paid sick leave under the PSLL during the gap. During the gap, all employees (both existing and new) must be permitted to use accrued paid sick leave in accordance with the employer's policy.

## **For what purposes can employees use sick leave?**

- An employee's own sickness, such as time needed for the diagnosis, care, or treatment of, or recovery from, an employee's own mental or physical illness or injury, including preventive care
- A family member's sickness, such as time needed to aid or care for a family member during diagnosis, care, treatment of, or recovery from, the family member's mental or physical illness, including preventive care ("family member" is broadly defined in the law)
- Domestic or sexual violence incidents, such as absences due to circumstances resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence, if the leave is to allow the employee or family member to obtain medical, legal, or other victim services
- School needs, such as to attend a school-related conference, meeting, function, or other event requested or required by the school, or to attend a meeting regarding care provided to the child of the employee
- School and work closures, such as when "the employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of the issuance by a public health authority of a determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others"

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**Source URL:** <https://www.natlawreview.com/article/frequently-asked-questions-about-new-jersey-paid-sick-leave-law-part-i>