



# EARNED SICK LEAVE

## What Employers Need to Know

For full details visit [mysickdays.nj.gov](http://mysickdays.nj.gov)

New Jersey employers of all sizes are required to pay employees for up to 40 hours of earned sick leave **to care for themselves or a loved one**. Earned sick leave covers time off:

- For physical/mental illness or wellness care
- To cope with domestic/sexual violence
- To attend a child's school-related meeting, conference, or event, when requested by the school
- To care for children when school or child care is closed due to an epidemic or public health emergency

### NOTICE OF RIGHTS

Employers must give employees written notice of their right to earned sick leave and the details of the law. Notice must be in employee's primary language if available on the NJDOL website. Employers must also display the Earned Sick Leave poster where all employees can see. View and download our free employer poster packet at [nj.gov/labor/posters](http://nj.gov/labor/posters).

### WHO'S COVERED BY THE LAW?

Employers must provide earned sick leave to nearly all employees no matter how they are paid (salary, cash, piece rate, etc.). This includes full-time, part-time, temporary, and seasonal employees.

All employers are covered by the law, even small employers, but the following workers are exempt:

- individuals employed in the construction industry under a union contract
- per diem health care employees
- public employees who are provided with sick leave at full pay under any other NJ law or rule
- independent contractors who do not meet the definition of an employee under NJ law

### ACCRUAL METHOD VS. ADVANCING LEAVE

Employers must select one of the following:

- **Accrual method:** Employees accrue 1 hour of sick leave per 30 hours worked, up to 40 hours per benefit year.
- **Advance leave:** Employees are advanced at least 40 hours of sick leave on the first day of the benefit year, for use throughout the benefit year. Employers can prorate earned sick leave hours for new employees.

Employees must be able to use earned sick leave 120 days after their first day of employment, or sooner.

### ESTABLISH A BENEFIT YEAR

Employers must establish a 12-month period for each employee to accrue and use sick leave. If an employer proposes to change the benefit year, they must provide NJDOL 30 calendar days' notice.

### PAYING AND USING EARNED SICK LEAVE

- Employers must pay an employee their earned sick leave in the same or next pay period after the leave is used. Pay must come with their regular paycheck or another method that can be deposited or cashed easily.
- Employers must pay earned sick leave at the employee's normal rate of pay and at least the state minimum wage. (See [nj.gov/labor/minwage](http://nj.gov/labor/minwage)).
- An employee can work additional hours to compensate for work missed rather than use earned sick leave if the employer agrees. However, employers cannot require this.
- Employers also cannot require an employee to use earned sick leave or find a replacement for the missed hours.

## ADVANCE NOTICE

- **Foreseeable leave:** An employer can require up to seven days' advance notice of intention to use earned sick leave.
- **Unforeseeable leave:** If advance notice cannot be given, an employer may require the employee to provide notice as soon as is practical.
- **High-volume periods or special events:** An employer may prohibit employees from using foreseeable earned sick leave during these times, but the employer must provide reasonable notice of those dates and times.

## DOCUMENTATION

The employer can require reasonable documentation if:

- an employee uses three or more consecutive workdays as earned sick leave and/or
- the employee's need for earned sick leave is not foreseeable and is being sought for use during high-volume periods or special events

The employer cannot require the employee to specify the reason for earned sick leave. Find a list of reasonable documentation: [mysickdays.nj.gov](http://mysickdays.nj.gov)

## UNUSED EARNED SICK LEAVE

Employees do not "use or lose" their earned sick leave. Employers must choose one of the following:

- Allow employees to carry over unused earned sick leave to the next benefit year. However, the employer is only required to allow an employee to use up to 40 hours of leave per benefit year; **OR**
- Pay an employee for any unused earned sick leave at the end of the benefit.

## EARNED SICK LEAVE AND PAID TIME OFF POLICIES

Employers may use a Paid Time Off (PTO) policy to comply with the Earned Sick Leave law, but the policy must meet or exceed the requirements of the law. If an employer includes earned sick leave with their PTO policy, all days in the PTO policy must meet the requirements of the Earned Sick Leave law.

## RECORDKEEPING

The employer must keep and maintain records for five years documenting compliance with the law. They must keep reasons for used earned sick leave and must keep them confidential unless the employee gives written permission to disclose it. Records must be made available to NJDOL upon request.

## RETALIATION

An employer cannot retaliate against an employee for requesting or using earned sick leave, filing a complaint with NJDOL, or informing any other person of their rights under the law.

## COMPLAINTS

Employees may file earned sick leave complaints against employers. Learn more at [nj.gov/labor/wh](http://nj.gov/labor/wh).

## QUESTIONS

Email [wage.hour@dol.nj.gov](mailto:wage.hour@dol.nj.gov). Call 609-292-2305 between 8:30 a.m. and 4 p.m. and ask for information about earned sick leave. TTY users can contact this department through NJ Relay: 7-1-1.

