Best Practices in Implementing Earned Sick Days Ordinances in New Jersey

Introduction

Earned sick days policies have begun to move in a number of municipalities in New Jersey. In September 2013, Jersey City passed an earned sick days ordinance that went into effect on January 24, 2014, making it the first municipality in New Jersey, and 7th nationally to adopt an earned sick days policy. And in February 2014, Newark passed a similar ordinance (effective June 21, 2014), making it the 2nd municipality in New Jersey and 8th nationally. As the movement grows stronger and the number of municipalities in New Jersey considering an earned sick days’ (ESD) policy increases, it becomes important to understand and address implementation and enforcement issues. Implementation and enforcement cannot be separated from overall policy development and should include all stakeholders, policymakers, and other interested parties.

With this in mind, the Rutgers Center for Women and Work has prepared this issue brief on implementation and enforcement factors for municipalities to consider as they are working to adopt earned sick days policies. These include outreach and education to employers and employees, handling complaints, responding to inquiries, and carrying-out enforcement. Below is a set of recommended priority actions and strategies to consider as New Jersey municipalities plan adoption of an earned sick day policy. Accompanying this document is a sample posting notice (Appendix A); Frequently Asked Questions (FAQs) (Appendix B); and a resource page with links to websites and materials (Appendix C) that can serve as resources and templates for municipal implementation.

Background

Research shows that providing paid sick days to employees who are ill or who need to care for ill family members is associated with a range of benefits for the employer, employee, and community. Workers, for instance, will benefit from their increased economic and job security. At the same time, employers benefit from their employees’ stronger workplace attachment and increased worker retention and productivity.¹ Research also shows that earned sick days public policy has a positive
impact on public health. Lacking alternatives, many workers go to work while ill, sometimes spreading contagion. According to the Health Impact Assessment of paid sick days policies in New Jersey conducted by Human Impact Partners in April 2011, an earned sick days standard would reduce the spread of pandemic and seasonal flu in New Jersey, reduce emergency room usage, protect the public from diseases carried by sick workers in restaurants and nursing homes, and enable workers to stay home when they are sick or need to care for a sick dependent.²

In response to the public health benefits of earned sick days, two of New Jersey’s largest cities – Jersey City and Newark – have adopted ESD ordinances, paving the way for other cities and the state to adopt similar ESD policies. To that end, several other municipalities in New Jersey are actively pursuing adoption of ESD policies through ballot initiative or ordinance, modeled after the Newark ESD ordinance.

Once adopted, a well-designed and executed strategy/plan for implementation of the ESD ordinance will help inform employers and employees of their rights and responsibilities under the ordinance and will help ensure that the ordinance successfully reaches its purpose.

**BETWEEN PASSAGE AND IMPLEMENTATION**

Between the win and implementation,³ there are a few basic steps that municipalities can take to lay the groundwork for seamless roll out of the policy.

- **Develop Materials:**
  - Clear and helpful information about the ordinance, including answers to frequently asked questions (See Appendix B for example of FAQ). Outreach materials (FAQs, flyers, brochures, posters, etc.) should be simple and easy to understand. They should also be made available in a municipality’s most frequently spoken languages.
  - Notices and posters for employers and employees (again, in multiple languages) to inform employees of their rights, and for employers to be in compliance with the notice and posting requirements of the ordinance (See Appendix A for template for Posting Notice);
  - All materials and information should be made available online, either on the city’s current website or an independent stand-alone site. Please visit www.njtimetocare.org/implementation or see the attached resource page to view other cities’ websites on their ESD policy.
- **Establish and publicize dedicated phone line and email** for inquiries and complaints of non-compliance.
- **Ensure sufficient staffing,** or dedicate existing staff members, to respond to inquiries and complaints and to ramp up education and enforcement efforts in the initial implementation phase.
- **Establish procedures** for recording/documenting questions, complaints and responding to them.

- **Establish partnerships and build on existing relationships** between agency staff and business community, advocacy and community-based organizations to supplement outreach and education and extend the agency’s reach, especially among low-wage, immigrant, and other hard to reach populations.

### IMPLEMENTATION/Roll-out of Policy:

The Ordinance as currently drafted requires employers to notify employees, so first and foremost all businesses in the municipality need to be informed of the new law, its effective date, their duties and responsibilities under the ordinance, and employees’ rights; direct them to the appropriate website and offices to obtain more information.

Once the law is in place, there are several roll-out strategies that the Agency responsible for implementation and enforcement can utilize to reach and inform first employers and then employees, including:

- **Distribute notices and education materials** to all City Departments, to the Chamber of Commerce, and to other organizations that can educate employers and employees of about their rights and responsibilities under the ordinance;
  
  - Work with treasury and tax collector, with office of business licensing - health care, minimum wage and sick leave info is distributed when new businesses apply for new licenses.
  
  - Have Health Department send letter to every restaurant owner in city to stress importance of ESD as means to combat spread of communicable diseases.
  
  - Work with School Board to send information to every parent in of school-age children

- **Engage in public presentations**, with information giving an overview of the law, employer responsibilities, workers covered, accrual details, permitted use of the leave, and compliance.

- **Use opportunities for earned and other media** to get word out about the new law; use graphics and video via social media (twitter, facebook, etc), PSAs, billboards, etc.
**ENFORCEMENT**

Here are a few tips on how to effectively monitor and enforcement ESD ordinance.

- **Closely track** volume of inquiries and complaints. Make sure to record questions and concerns regarding the bill provisions with the aim to supplement FAQs and/or rules/ordinance or procedures to address gaps in program.

- **Provide technical assistance** and be proactive in outreach to employers – offer trainings, presentations (partnering with Chamber of Commerce and other business and community-based organizations).

- **Develop process for investigating complaints.** For example: Seattle developed process that began with an advisory letter to the employer – essentially a “soft notice” to employers about reported violation. Employers were asked resolve the matter within 30 days. Ninety-one percent of claims were resolved in this manner. Important note, employees’ name were kept confidential.

- **Look to enforcement beyond a complaint-driven process;**
  - Ask for documentation from businesses that shows they are in compliance;
  - In companies where complaint has been filed, investigate to see if it is company-wide issue;

As Departments responsible for implementation and enforcement of earned sick days ordinance start to ramp up their program and outreach and education, they can look to municipalities that have policies in place to inform their work. See Appendix C for links to materials and other resources in cities that have adopted earned sick days.

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3 Newark and Jersey City ordinances established effective date of 120 following enactment “except that in the case of employees covered by a collective bargaining agreement in effect on the effective date prescribed herein, this ordinance shall apply on the date of the termination of such agreement unless the collective bargaining agreement expressly waives the protections set forth in this ordinance.” Current ballot petitions and proposed ordinances in East Orange, Passaic, Irvington, Paterson, Trenton, and Montclair have similar provisions.
Notice of Employee Rights to Paid Sick Time

Under (municipality) Paid Sick Time Law (also known as Earned Sick Days), certain employers must give their employees paid sick time.

Employees who work more than 80 hours in a calendar year in (municipality) must be provided with paid sick time by their employers. The law excludes from this requirement: individuals employed by the city, state, or federal government; individuals employed by any New Jersey school district or Board of Education; and members of a construction union who are enrolled or have graduated from a registered apprenticeship program and are covered by a collective bargaining agreement.

By law, employers who must provide paid sick time must give this written notice to new employees when they begin employment and to existing employees as soon as practicable. Employers must also post this notice in a conspicuous and accessible place in each establishment where employees are employed.

YOU HAVE A RIGHT TO PAID SICK TIME, WHICH YOU CAN USE FOR THE CARE AND TREATMENT OF YOURSELF OR A FAMILY MEMBER.

Amount of Paid Sick Time and Rate of Accrual:

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<tr>
<th>If your employer has . . .</th>
<th>You Accrue</th>
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<tr>
<td>10 or more employees</td>
<td>1 hour of paid sick time for every 30 hours worked</td>
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<td>1 hour of paid sick time for every 30 hours worked</td>
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<td><strong>Exception:</strong> Regardless of the number of people employed by your employer, if you are a child care worker, home health care worker, or food service worker</td>
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Sick leave is accrued based on your employer’s calendar year. Accrued sick time may be used in the smallest increments that the employer’s payroll system uses to account for absences or use of other time.

**Date Paid Sick Time Accrual Begins:**
You begin to accrue paid sick time on (120 days following enactment of the ordinance or as specified in the ordinance) or on your first day of employment, whichever is later.

- **Exception:** If you are covered by a collective bargaining agreement that is in effect on (effective date as stated above), you begin to accrue paid sick time under this law beginning on the date that the agreement ends, unless the collective bargaining agreement expressly and clearly waives the protections of the Paid Sick Time Law, in which case all or any portion of this law will not apply to you.

**Date Paid Sick Time is Available for Use:**
If, on (effective date of ordinance), you have been employed by your employer for more than 90 calendar days, you can begin using paid sick time as it is accrued. Otherwise, you can begin using paid sick time 90 calendar days after your employment begins. You may use paid sick time as it is accrued beginning on the 90th calendar day of employment.
Acceptable Reasons to Use Paid Sick Time:
You can use paid sick time when:

- You have a mental or physical illness, injury, or health condition; you need to get a medical diagnosis, care, or treatment of your mental or physical illness, injury, or condition; you need to get preventive medical care.
- You must care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or who needs preventive medical care.
- Your employer’s business closes due to a public health emergency; you need to care for a child whose school or child care provider closed due to a public health emergency; or you need to care for a family member whose presence in the community would jeopardize the health of others.

Family Members:
The law recognizes the following as family members:

- Child (biological, adopted, or foster child, stepchild or legal ward; child of an employee standing in “loco parentis”—in place of a parent)
- Parent
- Spouse
- Domestic Partner
- Civil Union Partner
- Grandchild
- Grandparent or spouse, domestic partner, or civil union partner of a grandparent
- Child or parent of an employee’s spouse, domestic partner, or civil union partner
- Sibling

Advance Notice:
If the need is foreseeable, your employer can require no more than up to seven days advance notice of your intention to use paid sick time. If the need is not foreseeable, your employer may require you to give notice before the beginning of your work shift or work day, or as soon as practicable in an emergency where advanced notice is not possible.

Documentation:
If you use three or more consecutive workdays for instances of paid sick time, your employer can require reasonable documentation (signed by a health care professional) that the time has been used for acceptable purpose (listed above). Such documentation may not be required to explain the nature of the illness.

Unused Paid Sick Time:
Up to 40 hours of unused paid sick time can be carried over to the next calendar year. Your employer is only required to let you use up to 40 hours of paid sick time per calendar year. However, if your employer has fewer than 10 employees, they are not required to provide more than 24 hours of paid sick time in a calendar year (with the exception of child, home health care, and food service workers).

Retaliation is prohibited:
Your employer cannot retaliate against you for using paid sick time. Retaliation includes any threat, discipline, discharge, demotion, suspension, reduction in your hours, or any other adverse employment action against you for exercising or attempting to exercise any right guaranteed under the law. Your employer cannot retaliate against you for:

- Requesting and using paid sick time.
- Filing a complaint for alleged violations of the law.
- Communicating with any person, including coworkers, about any violation of the law.
- Participating in an administrative or court proceeding regarding an alleged violation of the law.
- Informing another person of that person’s potential rights.
Enforcement:

You have a right to file a complaint with the Department of Health and Human Services (or other designated agency). To file a complaint, go to (insert designated contact info/website and/or email/phone number). The Department will keep your identity confidential unless disclosure is necessary to resolve the investigation. The Department will notify you that they will be disclosing your identity prior to such disclosure, to the extent practicable.

You also have the right to file a complaint with the Municipal Court. To file a complaint, (insert info on how to file complaint), or call (insert phone number) for more information. You do not have to file a complaint with the Department of Health and Human Services before filing a complaint in Municipal Court. Filing a complaint with the Department does not prevent you from filing an action in Municipal Court.

Keep a copy of this notice and all documents that show your amount of paid sick time and your paid sick time accrual and use.

Note: The Paid Sick Leave Law sets the minimum requirements for paid sick time. Your employer’s leave policies may already meet or exceed the requirements of the law.

You have a right to be given this notice in English and your primary language, if your primary language is also the primary language of at least 10% of your employer’s workforce.
Frequently Asked Questions: 
(insert municipality) Paid Sick Leave Ordinance

On (effective date), the (municipality) Paid Sick Leave Ordinance took effect and the effective data is 120 later. The Ordinance requires employers to provide paid sick leave to their private-sector employees (see below exemptions) who work within (municipality) city limits.

The Department of Health and Human Services (or alternate department) is responsible for coordinating implementing and enforcing this Ordinance.

This Frequently Asked Questions (FAQ) sheet addresses some of the most common questions about the ordinance. Do you have a question that isn’t covered by this FAQ? Contact the Department of Health and Human Services at (addresses), (e-mail).

A. General provisions

1. What does the ordinance do?
   The Paid Sick Leave Ordinance (PSL) establishes minimum standards for employers to provide paid sick leave to employees who work within (municipality) City limits. The ordinance also prescribes penalties, remedies and enforcement procedures.

2. When did the PSL Ordinance take effect?
   The PSL Ordinance took effect on (effective date).

3. Who is covered?
   Employees who work more than 80 hours a year in the city of (municipality). The law excludes individuals employed by the city, state, or federal government; individuals employed by any New Jersey school district of Board of Education; and members of a construction union who are enrolled or have graduated from a registered apprenticeship program and are covered by a collective bargaining agreement.

4. How much paid sick leave must be provided to employees?
   It depends on the number of total employees at a place of work. See the below chart for annual amount of paid sick time and rate of accrual. Accrued sick time may be used in the smallest increments that the employer’s payroll system uses to account for absences or use of other time.

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5. **For what purposes can paid sick time be used?**
   - An employee’s mental or physical illness, injury, health condition, need for medical diagnosis care or treatment of a mental or physical illness, injury or health condition, or an employee’s need for preventive medical care.
   - An employee needs to provide care for a family member with a mental or physical illness, injury, health condition, or preventive medical care and diagnosis.
     - Family members include an employee’s child (biological, foster, step, adopted, or legal guardianship), Grandchild, Spouse, Domestic Partner, Civil Union Partner, Parent, Grandparent or Spouse (including domestic partner or civil union partner) of a Grandparent, Child or Parent of an employee’s spouse (or domestic partner or civil union partner), and Sibling.
   - An employee’s place of business has been closed due to a public health emergency.
   - An employee needs to care for a child whose school or place of care has been closed due to a public health emergency.

6. **When do employees begin to accrue paid sick leave?**
   On the effective date of the paid sick time ordinance or on the first day of their employment, whichever is later. Exception is when an employee is covered by a collective bargaining that is effective on the effective date of the paid sick time ordinance, they begin to accrue paid sick time under beginning on the date that the agreement ends, unless the collective bargaining agreement expressly and clearly waives the protections of the Paid Sick Time Law, in which case all or any portion of this law will not apply to them.

7. **When can employees begin to take their accrued paid sick leave?**
   If on the effective date of the paid sick time ordinance a worker has been employed for more than 90 calendar days, they can begin using paid sick time as it is accrued. Otherwise, they can begin using their time 90 calendar days after employment begins.

8. **Does an employee have to provide advance notice to their employer when planning to take paid sick time?**
   If the need is foreseeable (i.e., preventative doctor appointment), the employee can asked to provide no more than up to seven days advance notice. If the need is not foreseeable, an employer may require their employee to give notice before the beginning of work or as soon as practicable in an emergency where advanced notice is not possible. Employees may be required to provide a signed doctor’s note (not required to disclose the nature of illness) if taking sick time of more than 3 consecutive days.

9. **What type of notice must an employer provide their employees?**
   All employers must give a written notice to each new employee regarding their rights under the Ordinance, as soon as practicable if the employee is already employed at the effective date of this law. Such a notice must describe the employees’ rights under the paid sick time ordinance. The notice must be provided in English and in the primary language of at least 10% of the employer’s workforce. The notice must be displayed in a conspicuous and accessible place at the workplace.

10. **What actions can an employee take to ensure that an employer complies with the law?**
    Employees can file a complaint with the Department of Health and Human Resources at [insert contact info, phone number, email, website]. They may also file a complaint with the Municipal Court. Employers are not permitted to retaliate against employees for using paid sick time they are entitled to.
Appendix C
Websites & Helpful Links

Please visit www.njtimetocare.org/implementation to link to other cities’ websites on their ESD policy. The following links are listed:

**Jersey City, New Jersey**
- Paid Sick Leave Ordinance
- FAQ’s for Workers in English and 5 other languages
- FAQ’s for Employers

**San Francisco, CA**
- FAQ
- Rules
- Key Components
- Fact Sheet in English, Chinese, and Spanish
- Official Poster Notice
- Official Sick Leave Law
- Complaint form in English, Chinese, and Spanish
- Know your rights flyer in English, Chinese, and Spanish

**Seattle, Washington**
- [www.seattle.gov/civilrights/SickLeave.htm](http://www.seattle.gov/civilrights/SickLeave.htm)
- Video
- FAQ
- Overview of law
- Online questionnaire form (pre complaint investigation)
- Webinar
- Reports on the impact of the Ordinance from Main Street Alliance and University of Washington

**Portland, Oregon**
- [www.portlandoregon.gov/sicktime](http://www.portlandoregon.gov/sicktime)
- Portland’s Protected Sick Time Ordinance
- Official Poster Notice and in Spanish
- Multiple types of FAQ links
- Resources for Employers
- Resources for Employees

**Washington D.C.**
- Accrued Sick and Safe Leave Act of 2008
- Earned Sick and Safe Leave Amendment Act of 2013
- Official Poster

**Newark, New Jersey**
- [www.ci.newark.nj.us/business/paid_sick_time_ordinance.php](http://www.ci.newark.nj.us/business/paid_sick_time_ordinance.php)
- Paid Sick Leave Ordinance

**New York City, NY**
- Official Notice of Employee Rights in multiple languages
- FAQ
- Complaint form
- Presentation in multiple languages
- Outreach Video in multiple languages

**OTHER HELPFUL RESOURCES:**

**Center for Law and Social Policy** – Policy briefs on implementation strategies in Seattle, San Francisco, and Connecticut