



MEMORANDUM

TO: David Fish, Executive Director
Office of Legal and Regulatory Services
New Jersey Department of Labor & Workforce Development

FROM: Christina M. Renna, Senior Vice President. CCSNJ

RE: Comments on **Earned Sick Leave Rules:** Proposed New Rules: N.J.A.C. 12:69

DATE: December 13, 2018

The Chamber of Commerce Southern New Jersey (CCSNJ) appreciates the opportunity to provide written comments to the New Jersey Department of Labor & Workforce Development on the earned sick leave rules as a part of the public participation process. The CCSNJ is also submitting separate comments as part of the New Jersey Civil Justice Institute (NJCJI) coalition of employers and business associations.

The CCSNJ has several concerns with the regulations as proposed, including:

- **Definition of “Benefit Year”:** As written in the regulations, the definition of “Benefit Year” is different than the statute. The statute defines the Benefit Year as any 12-month period allowing employers to decide if the “year” begins on a calendar year, fiscal year or anniversary date-basis for employees. However, the rules state the Benefit Year is “the period of 12 consecutive months established by an employer in which all employees shall accrue and use earned sick leave.” This discrepancy would make it impermissible for an employer to use an anniversary date as the Benefit Year, which would be preferable and easiest to track for some employers. *The CCSNJ submits that the language be changed to allow employers to use the anniversary year as the Benefit Year, in addition to having the option to use calendar year or fiscal year as the Benefit Year.*
- **Carryover Issues:** The regulations and statute clearly state that an employee can only use 40 hours of earned sick leave per year. However, regardless if an employer chooses to frontload the 40 hours of earned sick leave or use the accrual method, the regulations are unclear how an employer should proceed regarding the carryover provision should an employee not use all 40 hours in one Benefit Year. *The CCSNJ submits that the regulations should reflect the statue’s intent that only 40 hours of earned sick leave can be used per year.*
- **Option to Payout Unused Leave:** The CCSNJ submits that the *employer should decide* whether or not an employee gets paid for unused sick time. The purpose of sick leave is to provide *wage replacement* when an employee needs time off for their health, the health of a family member or other reasons outlined in the law. By allowing the payout of unused sick time in lieu of carryover as allowed for in the regulations, sick leave would serve as a monetary bonus for employees who do not get sick, do not need the time off, or chose to work when sick to receive an end of the year payout

form employer. *This language in the regulations undermines the sole intention of the statute and should be removed.*

- **Definition of “Employee”:** The rules define an employee as “an individual engaged in service for compensation to an employer in the business of the employer who performs service in New Jersey.” This should be amended to address exactly how much time an employee, who works both in and outside of New Jersey, must spend in New Jersey to be eligible for earned sick leave. This is a major issue for multi-state employers who have employees that work in New Jersey part-time. *Although the Frequently Asked Questions (FAQs) do address this issue, the CCSNJ asks that clarification be reflected in the regulations.*
- **Use of Leave:** The statute and regulations are inconsistent as to when a current employee is eligible to use earned sick leave. The statute allows for leave to be accrued “on the effective date of this act for any employee who is hired and commences employment before the effective date of this act and the employee shall be eligible to use the earned sick leave beginning on the 120th calendar day after the employee commences employment.” However, the regulations provide that “an employee shall not be eligible to use earned sick leave until February 26, 2019 (the 120th calendar day after October 29, 2018), or the 120th calendar day after the employee commences employment, whichever is later.” This incorrectly suggests that all employees hired before October 29, 2018, regardless of their hire date, must wait 120 days (until February 26, 2019) until they can use their sick leave accrued under the Act. *The CCSNJ submits that the regulations match the statute to avoid confusion for employers and employees.*

Thank you for the opportunity to weigh-in on the New Jersey Department of Labor & Workforce Development earned sick leave regulations.