

# WILENTZ

—ATTORNEYS AT LAW—

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## Violating the New Jersey Earned Sick Leave Law Can Be Very Costly

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Did you know that, pursuant to the [2018 New Jersey Earned Sick Leave Law](#), all New Jersey employers are obligated to provide each employee working in the state with paid earned sick leave (“ESL”) for qualifying reasons? Employers have obligations and employees have rights under the law, and when the law is not followed, it can have very serious ramifications for employers.

### **EARNED SICK LEAVE VIOLATION RESULTS IN HEFTY JUDGMENT AND ATTORNEYS’ FEES**

In June 2019, one of the first challenges to the ESL Law was filed. Plaintiffs who worked for a concrete company formed a class and sued their employer for violations of the ESL Law. Following a 2022 trial, the Court found the employer liable for violations of the ESL Law concerning notice and recordkeeping requirements, maintenance of unlawful policies in violation of the ESL Law and denial of ESL benefits to the class.

The Court found in favor of the class and awarded damages in the amount of \$776,898.38. Shortly thereafter, an application for an award of attorneys’ fees was filed. The Court entered an Order awarding attorneys’ fees and costs in the amount of \$591,423.91, increasing the total amount owed by the employer, to more than \$1,350,000.

### **KNOW THE EMPLOYEES’ RIGHTS**

Employees are entitled to paid leave for qualifying reasons during the 12 consecutive month benefit year established by their employer. On the first day of employment, an employee shall immediately begin to accrue ESL, or receive a pro rata bank of ESL. Following an employee’s 120<sup>th</sup> calendar day of employment (or sooner), employers must allow employees to begin using ESL. ESL can be provided in one of two ways:

1. accrued at a rate of one hour for every 30 hours worked, up to 40 hours per benefit year; or
2. a bank of 40 hours provided at the commencement of each benefit year.

While employers may have a single policy that offers general paid time off, which includes time off for the reasons outlined in the ESL Law, and is accrued at a rate equal to or better than the rate required by the ESL Law, [employers should be cautious to ensure they are compliant with the law](#).

An employee may use ESL in increments designated by the employer, with the maximum increment of the length of the shift during which the employee requests to use ESL. ESL can be used for a multitude of reasons, including:

1. diagnosis, care, treatment or recovery from an employee’s mental or physical illness
2. diagnosis, care, treatment or recovery from an employee’s family member’s mental or physical illness
3. absence for employee or to assist a family member who is a victim of domestic or sexual violence
4. time during which an employee is unable to work because of epidemic or other public health emergency resulting in closure of the workplace or school or place of care of a child of the employee
5. to attend a school-related conference, meeting function or other event requested or required by an employee’s child’s school

An employer does not have to allow an employee to utilize more than 40 hours of ESL in any benefit year. If an employee has remaining ESL at the close of a benefit year, depending on whether the employer uses the “accrual method” or the “advance method”, an employer may offer to pay out the accrued but unused ESL in the final month of the benefit year at 50% or 100% of the accrued but unused time – which the employee may reject; or the employer may carry over a maximum of 40 hours of ESL to the following year. Notwithstanding any carry over, an employer may limit the use of ESL to 40 hours each benefit year.

## **KNOW THE EMPLOYER’S OBLIGATIONS**

In addition to providing and administering ESL to each employee working in New Jersey, employers have a host of other obligations under the law. [It is critical employers establish and maintain ESL records for a minimum of five \(5\) years and are able to demonstrate compliance with the law.](#) The records must document employee hours worked and any ESL taken so they can establish to the Department of Labor, if necessary, that ESL was properly accounted and accrued, as well as used, carried over and/or paid out. The law presumes an employer is in violation of the ESL Law if it has failed to maintain and cannot produce records.

Employers are prohibited from retaliating or discriminating against employees because they request or use ESL, or file a complaint concerning ESL. If an employee suffers an adverse employment action within 90 days of filing a complaint, alleging a violation, informing another of their rights to earned sick leave, opposing a practice inconsistent with ESL and/or cooperating with any investigation of a violation, there will be a (rebuttable) presumption that the employer’s actions are unlawful retaliation.

Among other responsibilities under the law, [employers are also responsible for posting the ESL Poster, among numerous other posters.](#)

**TAKEAWAY:** Unquestionably, it is critical that employers not only comply with the ESL Law in providing employees with ESL, but that they also post required notices and maintain appropriate records. If you would like to know more about the ESL Law and how it affects your workplace or to ensure you are compliant, reach out to [Wilentz’s Employment Law Team](#).

### **Attorney**

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### **Practice**

- Employment Law