

# **A Review of Sick and Vacation Leave Policies in Jersey City**

## **Executive Summary:**

The following report, conducted by the Office of Jersey City Councilman James Solomon, reviews the compliance of five local government entities with state laws aimed at phasing out excessive “boat payments” or lump-sum payments of accrued sick and vacation leave granted to a government official at the time of their retirement. The Councilman initiated this report to fulfill his commitment to save Jersey City taxpayer dollars by rooting out waste, fraud, and abuse in municipal and county government.

This report analyzed 42 contracts and regulations from the five local government entities that tax or charge Jersey City residents: Hudson County, Jersey City, Jersey City Public Schools, Hudson County Schools of Technology, and the Jersey City Municipal Utilities Authority. The report revealed that each of the five entities utilized contracts that were not clearly compliant with the law. In three entities - Jersey City Municipal Utilities Authority, Hudson County Schools of Technology, and Jersey City Public Schools - the substantial majority of contracts (70.83%) were either non-compliant or contained ambiguous language. This finding raises the serious concern that significant taxpayer dollars are being improperly spent due to poorly written contracts that do not reflect the intentions of the current laws governing boat payments.

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### **1. Introduction**

In an effort to reduce property taxes, the New Jersey State Legislature enacted laws in 2007 and 2010 that placed limits on the payment of unused sick leave and the accumulation of vacation leave for local government employees in New Jersey. These laws apply to various entities such as municipalities, school districts, counties, and local authorities. The 2007 law applies to senior employees, while the 2010 law extends the limitations to any employee hired after May 21, 2010. Employees covered by these laws cannot receive more than \$15,000 for accrued sick leave, which can only be received at retirement. Additionally, employees are prohibited from carrying over more than one year's worth of vacation leave. It's important to note that these laws are not retroactive, the 2007 law allows senior employees hired before that year to keep days accumulated before the law passed. The 2010 law affecting other employees only applies to those hired after May 21, 2010.

In 2022, the Office of the State Comptroller of NJ (OSC) published a report reviewing 60 local government's compliance with these laws. That report found that 57 of the 60 municipalities failed to fully comply with the 2007 and 2010 laws. These findings led this office to conduct a

smaller-scale report, focused on the five local government entities that tax or charge Jersey City residents based on the Comptroller's review. This report addresses the use of vague and ambiguous contracts by five local government bodies that potentially allow for the issuance of wasteful or unlawful payments to municipal employees.

## 2. Background

### *Sick Leave:*

According to N.J.S.A. 11A:6-19.1 (2007) and N.J.S.A. 11A:6-19.2 (2010), local governments that have chosen to be part of the civil service system are not allowed to pay more than \$15,000 in supplemental compensation for accumulated unused sick leave. This compensation can only be paid at the time of retirement, based on the amount of leave credited on the retirement date. The 2007 law applies to senior employees and allows those who were employed before the date of passage to be paid for the days they already accumulated or the up to \$15,000 in days accumulated after the passage. The 2010 law applying to other employees only applies to those who started their employment on or after May 21, 2010.

### *Vacation Leave:*

The New Jersey Legislature established two statutes that set restrictions on vacation leave accrual for non-civil service municipalities (N.J.S.A. 40A:9-10.3) and school districts (N.J.S.A. 18A:30-9). For municipalities under the civil service system, a pre-existing law already set similar restrictions on vacation leave, mirroring the 2007 reforms. The Legislature's goal with these laws was to standardize vacation policies for senior employees, aligning them with state employee guidelines. These reforms cap the accumulation of vacation days to a maximum of two years. Any unused days from one year can only be carried over to the following year; beyond that, they are forfeited. Furthermore, the statutes clarify that senior employees hired before the law's enactment, who have accumulated vacation days, can keep and utilize those days.

### *Vacation Leave Payouts Before Retirement:*

The Comptroller's report highlighted that municipalities undermined the goals of the 2007 and 2010 vacation leave reforms by exploiting a loophole in the state laws. These reforms were introduced to place local employees under the same stringent vacation accrual policies as state employees. According to these laws, vacation days carried over for one year should not carry over again.

However, the vacation reform laws leave room for interpretation, allowing municipalities to convert vacation leave into other forms of leave. They also do not bar financial compensation for unused vacation before the days are lost. Some municipalities have interpreted the law to allow employees to receive compensation for unused vacation days annually instead of forcing employees to forfeit their unused vacation days two years after they were accrued. The Comptroller's report acknowledges that this practice is not *expressly* prohibited by the reform laws, but it strongly asserts that doing so raises concerns about the *substantial* financial risks this practice poses to taxpayers. In this report, any contract language that allows vacation days to be

cash out beyond the intent of the 2007 and 2010 reforms is considered non-compliant, with details in the appendix.

### 3. Methodology

To assess compliance with the 2007 and 2010 laws, Councilman Solomon's office filed Open Public Records Act requests to obtain records of employment contracts, employment policy handbooks, executive orders, and municipal ordinances from local government entities that tax or charge Jersey City residents. The office then reviewed these documents for compliance with the 2007 and 2010 laws implementing statewide caps on accrued vacation and sick pay, based on the methods used in the 2022 Comptroller's report. The five local authorities reviewed in this report are the Jersey City Public Schools (JCPS), the City of Jersey City, the County of Hudson, Hudson County Schools of Technology (HCST), and the Jersey City Municipal Utilities Authority (JCMUA).

Our office based our findings on a scale of their compliance. This scale indicates whether a) a contract or regulation suggests non-compliance by containing provisions that violate the 2007 and 2010 laws, b) contains vague or ambiguous language that leaves the door open to noncompliance, or c) whether the contract contains provisions that clearly comply with the 2007 and 2010 laws.

The following are examples of the three categories:

- a. Suggested non-compliance by containing provisions that violate the 2007 and 2010 laws; **Example language for sick and vacation days:** "Employee shall be entitled to monetary compensation at his existing rate of pay for all accrued vacation and sick time during his tenure at the conclusion of his contract with the \_\_\_."

*Explanation: This contract ignores the provisions of both N.J.S.A. 11A:6-19.1 and N.J.S.A. 11A:6-3. It allows for compensation of all days, does not have a \$15,000 cap on payouts nor limits vacation days.*

- b. Vague or ambiguous language that leaves the door open to noncompliance: **Example language for sick leave:** "The accumulated unused sick leave payment schedule shall be based on accrued but unused sick leave credited on the date of separation from employment. The Board shall make such payment to the [employee] within sixty (60) days of his/her last day of employment. Accumulated sick leave shall only be payable at the time of retirement."

*Explanation: This contract is silent on the \$15,000 cap restriction required by N.J.S.A. 18A:30-9 and fails to mention if the employee has accumulated unused sick leave before the 2007 law went into effect. It states the employee's maximum payment upon retirement is \$45,300.*

**Example language for vacation leave:** "Vacation Leave: In any given year, should any accrued vacation days be unused due to business demands, those accrued vacation days may be carried over."

*Explanation: This contract does not limit the number of vacation days carried over year to year as required by N.J.S.A..*

c. Compliant language:

**Example language for sick leave:** “Since June 8, 2007, \_\_\_\_\_ accumulated an additional 186.0 sick days (283.0 total sick days). In the alternative, only upon retirement \_\_\_\_\_ may receive a sick day payout for sick days accumulated after June 8,2007, not to exceed \$15,000.”

*Explanation: This contract clearly lays out the employee’s choice to take a payout for days accumulated before the passage of the reforms or the \$15,000 max for days after the reforms as required by N.J.S.A 18A:30-9. This contract had a \$15k payout accounted for sick leave in 2018-2019*

**Example language for vacation leave:** “Must be taken in the calendar year in which it is earned. Vacation leave not taken in that calendar year is forfeited. All yearly time for sick, personal, and vacation (the "benefits") provided for in this contract is based upon an employee being in paid status during the period for which the benefits are given.”

*Explanation: This contract goes above and beyond the State regulations required by N.J.S.A. 40A:9-10.4 and limits the employee from carrying over days at all.*

#### 4. Findings

Below is a breakdown of each local government entity by category of document :

##### Jersey City Public Schools

- 1 or 6% of contracts suggest non-compliance
- 9 or 56% of contracts contain missing and/or vague language
- 6 or 38% of contracts are compliant

##### City of Jersey City

- 0 or 0% of contracts suggest non-compliance
- 2 or 33% of contracts contain missing and/or vague language
- 4 or 67% of contracts are compliant

##### Hudson County

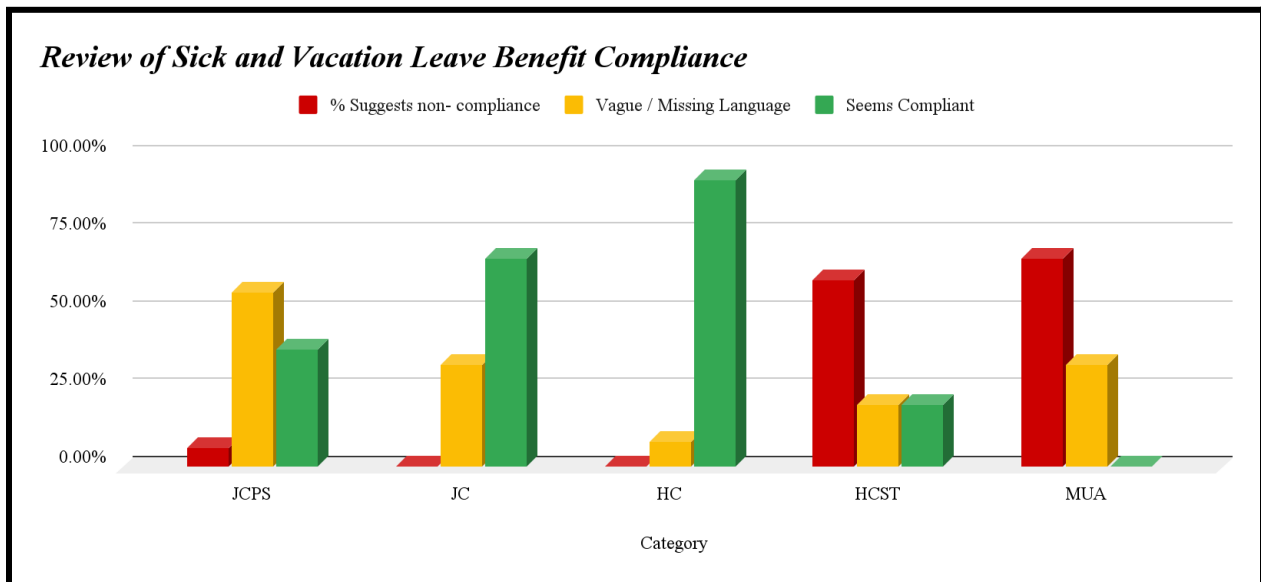
- 0 or 0% of contracts suggest non-compliance
- 1 or 8% of contracts contain missing and/or vague language
- 11 or 92% of contracts are compliant

##### Hudson County School of Technology

- 3 or 60% of contracts suggest non-compliance
- 1 or 20% of contracts contain missing and/or vague language
- 1 or 20% of contracts are compliant

##### Jersey City Municipal Utilities Authority

- 2 or 67% of contracts suggest non-compliance
- 1 or 33% of contracts contain missing and/or vague language
- 0 of 0% of contracts are compliant



*In total, 47.62% of the 42 documents across all entities had non-compliant or ambiguous language. For a more in-depth breakdown of documents Appendix A.*

Our office found that, of the five local governments audited, every one issued contracts that failed to clearly abide by the legally mandated cap on unused sick and vacation leave payments. These Contracts at a minimum, leave the door open to violations of state laws.

The substantial majority (70.83%) of contracts in three entities - JCPS, JCMUA, and HCST - were not compliant with the reform. All three bodies have contracts with at least one clause that directly contradicts the goals of the 2007 and 2010 reforms. Specifically, the JCPS and JCMUA exhibited a recurrent pattern of issuing contracts that either do not mention or incorrectly reference the \$15,000 sick leave caps. For instance, out of the six union contracts reviewed within JCPS, five failed to mention or properly cite the \$15,000 sick leave cap mandated by N.J.S.A. 18A:30-3.6. In total, nine of sixteen JCPS contracts did not clearly comply with the sick leave reforms, with one of those nine not clearly compliant with the vacation day accrual cap. Furthermore, four were vague about whether they permitted annual unused vacation day payout.

HCST had a higher percentage of contracts that included caps, but included provisions seemingly designed to circumvent these caps. For example, two of their union contracts adhered to the appropriate \$15,000 sick day cap but included substantial yearly bonuses for not utilizing sick days. These substantial bonuses were explicitly flagged in the Comptroller report as constituting "supplemental compensation," which is illegal to receive other than at retirement as per N.J.S.A. 18A:30-3.6. Three of five HCST contracts did not appear to be fully compliant with the sick day reforms, and two of the five may allow annual vacation leave payments.

Similarly, the JCMUA had documents that failed to properly reference the relevant laws and had documents that contained clauses that were designed to undermine the goals of the vacation leave law. None of the three documents reviewed for the JCMUA were in compliance with the sick leave laws. One had no limits on vacation day accruals and all documents reviewed permitted annual vacation day payouts.

While the City of Jersey City and Hudson County generally demonstrated compliance with the law, each government still utilized at least one contract that contained vague language that could be used to evade the law.

It is important to note that department directors in the City of Jersey City and Hudson County do not have individual contracts. In the case of Jersey City, their benefits are governed by executive order.

For a more detailed look at the findings, please see [Appendix A](#).

## 5. Conclusion

All five local governments in this report have contracts that contain provisions that open the door for non-compliance with 2007 and 2010 laws on accrued sick and vacation leave payments. For three entities, the repeated lack of restrictions on both sick and vacation leave payouts creates numerous loopholes. Jersey City taxpayers could assume the cost of wasteful or potentially unlawful payments, and any resulting litigation. If contracts do not directly cite the restrictions imposed by state law, it can lead to misapplication of the law.

The high number of contracts that have missing and vague language raise great concern that taxpayer dollars have been wastefully spent or illegally distributed. This office will proceed with the next phase of our investigation - requesting payment records to quantify the potential scale of any impermissible boat payments. If our investigation finds that these loopholes have in fact been abused, our office intends to work with the appropriate authorities to recoup those losses at no expense to the taxpayer, while strengthening independent oversight over the administration of these contracts to ensure full compliance with state law moving forward.

# **Appendix A**

## Appendix A:

Below is a breakdown of the findings of our report by document and category of compliance. The NJ Comptroller's report did not identify individual contracts or documents, and this report does the same. Each document is instead given a number.

We have broken down compliance into 3 elements.

1. Compliance with the Sick Leave Payout cap:
  - a. This represents whether the document is in compliance with the Regulations limiting any sick day payout to either days accumulated before 2010 or \$15,000 at retirement.
2. Compliance with Vacation leave cap:
  - a. This represents whether the document is in compliance with the Regulation that prevents vacation days from rolling over more than one year.
3. Vacation day payout limits:
  - a. This represents whether the document is in compliance with the goal of the Legislative reform to limit vacation day payout to 2 years' worth of days at retirement.
  - b. As the comptroller explains, circumventing this is against the intent of the law but explicitly prohibited; we had it as a separate category

Each Document is reviewed on each of the three elements. They are categorized as:

- Green for Compliant
- Yellow for Vague or missing language
- Red for suggests non-compliant

Jersey City Public Schools			
Document	Sick Day Payout Cap	Vacation Day Accumulation Cap	Vacation Payout limit
Manager Contract 1	Vague	Compliant	Compliant
Manager Contract 2	Vague/Missing Language	Compliant	Compliant
Manager Contract 3	Missing Language	Compliant	Compliant
Manager Contract 4	compliant	Compliant	Compliant
Manager Contract 5	Compliant	Compliant	Compliant
Manager Contract 6	Compliant	Compliant	Compliant
Manager Contract 7	Compliant	Compliant	Missing Language
Manager Contract 8`	Compliant	Compliant	Compliant
Manager Contract 9	Missing Language	Compliant	Missing Language
Manager Contract 10	Compliant	Compliant	Compliant



Union Contract 1	Suggests non-compliance	Compliant	missing language
Union Contract 2	Missing language	Compliant	Compliant
Union Contract 3	Missing language	Compliant	Compliant
Union Contract 4	Missing Language	Vague	Vague
Union Contract 5	Compliant	Compliant	Compliant
Union Contract 6	Missing Language	Compliant	Compliant

CITY OF JERSEY CITY			
Document	Sick Day Payout	Vacation Day Accumulation Cap	Vacation Payout limits
Executive Order 1	Compliant	Compliant	Compliant
Public Safety Union Contract 1	Compliant	Compliant	Vague/Missing Language
Public Safety Union Contract 2	Compliant	Compliant	Vague/Missing Language
Public Safety Union Contract 3	Compliant	Compliant	Compliant
Union Contract 1	Compliant	Compliant	Compliant
Union Contract 2	Compliant	Compliant	Compliant

JC MUA			
Contract	Sick day Cap	Vacation Leave cap	Vacation payout limits
Management Contract 1	Suggest Non-Compliance	Suggests non-Compliance	Missing Language/Vague
Union Contract 1	Suggests Non-Compliant	Compliant	Missing Language/Vague
Regulation 1`	Missing language/Vague	Compliant	Missing Language/Vague

Hudson County			
Document	Sick Day Payout Cap	Vacation Day Cap	Vacation Payout limits
Union Contract 1	Compliant	Compliant	Compliant
Union Contract 3	Compliant	Compliant	Compliant
Union Contract 4	Compliant	Compliant	Compliant
Union Contract 5	Compliant	Compliant	Compliant
Employee Handbook	Compliant	Compliant	Compliant

Union Contract 6	Compliant	Compliant	Compliant
Union Contract 7	Compliant	Compliant	Compliant
Union Contract 8	Compliant	Compliant	Compliant
Union Contract 9	Compliant	Compliant	Compliant
Union Contract 10	Compliant	Compliant	Compliant
Union Contract 11	Compliant	Compliant	Compliant
Union Contract 12	Compliant	Vague	Vague

HCST			
Document	Sick Day Payout Cap	Vacation Leave Cap	Vacation Payout limits
Manager Contract 1	Compliant	Compliant	Suggests Not Compliant <sup>1</sup>
Manager Contract 2	Vague/missing language	Compliant	Vague/missing language
Manager Contract 3	Compliant	Compliant	Compliant
Union Contract 1	Suggests non-compliance <sup>2</sup>	Compliant	Compliant
Union Contract 2	Suggests non-compliance <sup>2</sup>	Compliant	Compliant

<sup>1</sup> This manager contract, in addition to requiring annual payouts of vacation days, allows the manager to receive their vacation days if the contract is terminated.

<sup>2</sup> This union contract grants employees who do not use any sick days during a year a \$2,000 bonus. The status of such large bonuses is unclear, but the comptroller's report specifically said the following regarding payments of \$2,000 or more: **“OSC, however, contends that such payments constitute ‘supplemental compensation’ that is prohibited by law.”**