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New Jersey "Sandy" Law Preserves Employee Eligibility for Leave and Benefits

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To be eligible for leave under New Jersey's Family Leave Act (FLA) or the Security and Financial Empowerment Act (SAFE Act),[1] an employee must have been employed for at least 12 months and have worked at least 1,000 base hours in the immediately preceding 12-month period. In the wake of Hurricane Sandy, Governor Christie signed a law permitting employees who are furloughed or laid off because of a "state of emergency"[2] to credit up to ninety calendar days of that time as if it were time worked for purposes of determining whether an employee has met these eligibility requirements. The law applies to any furlough or layoff due to a "curtailment of operations" because of a state of emergency declared after October 22, 2012 (thus encompassing employees who have been furloughed or laid off due to Hurricane Sandy, which made landfall on October 29, 2012). To calculate the base number of hours to be credited for each week the employee was on layoff or furlough, the employer must use the average weekly hours the employee worked during the rest of the 12-month period.

The new law also provides that an employee will be able to use up to thirteen weeks as "base weeks" for purposes of meeting eligibility requirements for temporary disability and family leave insurance benefits (but not for purposes of calculating the "average weekly wage").[3]

This law took effect immediately upon the Governor's signing it on January 17, 2014. New Jersey employers should update their policies and procedures for FLA and SAFE Act leave to reflect the provisions of this new law and ensure compliance. Similarly, employers who have private plans to provide New Jersey-mandated disability and/or family leave insurance benefits should make sure that the eligibility standards for such plans and policies satisfy the new law's requirements. Employers who rely on the state disability insurance program also should remember to comply with the law in reporting the number of base weeks on the employer portion of the claim form. In addition, while Hurricane Sandy occurred well over a year ago, it is possible that some employees who were furloughed or laid off for reasons related to the storm currently might be impacted by this law, and employers who experienced such furloughs or layoffs should assess whether they have any such employees. Please contact your Proskauer relationship lawyer if you have any questions.

[1] Under the FLA, an employee may take leave for the birth or adoption of a child, or the serious illness of a parent, child, spouse, or civil union partner; the SAFE Act permits leave for victims of sexual or domestic violence.

[2] The new law defines the term "state of emergency" as a natural or man-made disaster or emergency for which the President, Governor or municipal emergency management coordinator declared a state of emergency.

[3] To be eligible for temporary disability or family leave insurance benefits in New Jersey, an individual must, within the 52 weeks preceding the week in which the disability or family leave began, have either: (a) worked at least 20 base weeks of covered employment at $145 or more per week; or (b) earned not less than 1,000 times the minimum wage.

Authors for this alert:
Joseph C. O'Keefe, Wanda L. Ellert, Daniel L. Saperstein and Allison L. Martin.