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New Jersey Enacts Statewide Paid Sick Leave Law

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New Jersey Governor Phil Murphy (D) has signed into law the New Jersey Paid Sick Leave Act (the "Act"), which will provide eligible employees with paid leave for their own medical needs, those of a family member, or other covered reasons. The Act will take effect on October 29, 2018.

Covered Employers and Employees

The Act applies to all employers with employees working in New Jersey, including temporary help service firms, regardless of employer size.

All employees working in the state will be eligible for paid leave under the Act, with the exception of:

- construction employees working under a collective bargaining agreement;
- per diem health care employees; and
- public employees, who are already required to receive paid sick leave.

Employees may begin using paid sick leave on the 120th day of employment, unless the employer agrees to an earlier date.

Accrual of Paid Sick Leave

Eligible employees are entitled to accrue sick leave at a rate of one hour of sick leave for every 30 hours worked in a benefit year (which may be any period of 12 consecutive months as established by the employer). An employer shall not be required to permit an employee to accrue more than 40 hours of sick leave in a given benefit year.

As an alternative to an accrual system, an employer may provide employees, in the beginning of each benefit year, with the full amount of earned sick leave that each employee would otherwise be entitled to accrue under the Act (the "front-loading method").

An employer that currently offers its employees paid time off (which may include personal, sick, and/or vacation days) that accrues at a rate equal to or greater than that required by the Act, and that can be used for the same purposes and in the same manner as provided by the Act, may use such time to satisfy its obligations under the Act.

Carry Over and Payout of Unused Leave

When sick leave is provide using an accrual system, employees may carry over up to 40 hours of earned but unused sick time into the following benefit year. Alternatively, employers may offer employees the option to receive payment of their unused sick days in the final month of the employer's benefit year. Employees may choose to: (i) accept payout of all earned but used sick leave; (ii) decline the payout and carry over all unused time to the following benefit year; or (iii) accept payout for half of the earned but unused leave time and carry over the remaining earned sick leave, which shall not exceed forty hours.

When sick leave is provided using the front-loading method, the employer must either provide the employee with a payment for the full amount of unused earned sick leave in the final month of the employer's benefit year or allow the employee to carry forward any unused sick leave to the next benefit year.

Permissible Reasons for Taking Sick Leave

Paid sick leave under the Act can be used for any one or a combination of the following reasons:

- time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventive medical care for the employee;
- time needed for the employee to aid or care for a family member of the employee during diagnosis, care, or treatment of, or recovery from, the family member's mental or physical illness, injury or other adverse health condition, or during preventive medical care for the family member;
- for covered reasons resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence;
- when an employee is not able to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, by order of a public official due to an epidemic or other public health emergency, or because of a

determination that the presence in the community of the employee, or a member of the employee's family in need of care by the employee, would jeopardize the health of others; or

- time needed by an employee to attend a child's school-related conference, meeting, function or other event requested or required by a school administrator, teacher, or other professional staff member, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

A "family member" is defined as "child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, or grandparent of an employee, or a spouse, domestic partner, or civil union partner of a parent or grandparent of the employee, or a sibling of a spouse, domestic partner, or civil union partner of the employee, or any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship domestic partner, or civil union partner of the employee."

Employee Notice Requirements

If the need to use earned sick leave is foreseeable, an employer may require up to seven calendar days' advance notice, and may further require employees to make a reasonable effort to schedule the use of sick leave in a manner that does not unduly disrupt the employer's operations. If the leave is not foreseeable, an employer may require notice as soon as practicable. In addition, employers may prohibit employees from using foreseeable earned sick leave on certain dates, and require reasonable documentation if sick leave that is not foreseeable is used during such dates.

Employers may require medical or other reasonable documentation for earned sick leave of three or more consecutive days to ensure that the reason for the leave is permissible under the Act. For leave related to an employee's or a family member's medical needs, such documentation would include information from a health care professional treating the employee or the family member indicating the need for the leave and, if possible, number of days of leave. For leave due to domestic or sexual violence, reasonable documentation may include such things as medical documentation, a law enforcement agency record or report, a court order, or documentation from a social worker, counselor, member of the clergy, attorney, or certified domestic violence specialist.

Employees may not be required to find coverage for missed hours or shifts, but the employer and employee may agree to have the employee work additional hours or shifts during the same or following pay period in lieu of the hours or shift missed.

Retaliation Is Prohibited

Employers may not retaliate against employees for exercising their rights under the Act. The Act creates a rebuttable presumption of unlawful retaliatory conduct when an employer takes adverse action against an employee within ninety days of when that employee files a complaint, informs others of a violation of the Act, cooperates with an investigation or prosecution made pursuant to the Act, opposes any policy that is made unlawful by the Act, or informs any person of his or her rights under the Act.

Employer Notice and Recordkeeping Requirements

Employers shall be required to conspicuously post a notice, as well as provide written notification to employees, of their rights under the Act. Such notice will be required to include the amount of earned sick leave to which employees are entitled and the terms of its use, as well as remedies provided by the Act if an employer fails to provide the required benefits or retaliates against employees exercising their rights. A form notice will be issued by the Commissioner of Labor and Workforce Development. Each covered employee must be provided with a written copy of the notification no later than 30 days after the form notification is issued and, for new employees, at the time of hire.

Employers will be required to maintain records reflecting both the hours worked and sick hours used by employees for a period of five years, which must be made available for inspection upon a request from the Department of Labor and Workforce Development.

Remedies Available

The Act provides that any violation shall be regarded as a failure to adhere to the wage payment requirements of the New Jersey State Wage and Hour Law, which provides several forms of remedies, including sanctions and criminal liability on the part of the employer and, in civil actions brought by employees, wages owed plus costs and attorney’s fees. In addition to these remedies, the Act provides that, in the case of a civil action, a prevailing employee shall be awarded actual wages owed as a result of the violation plus an equal amount of liquidated damages.

Preemption

About a dozen New Jersey cities had previously enacted paid sick leave ordinances. The Act preempts those ordinances and prevents municipalities from passing resolutions concerning paid sick leave going forward.

We will continue to report on new developments with regard to this law as they arise.

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