Proskauer

Proposed Rules Issued for New Jersey Paid Sick Leave Act

Law and the Workplace Blog on **September 26, 2018**

The New Jersey Department of Labor and Workforce Development has issued proposed rules for the recently enacted New Jersey paid sick leave act (the "Act"), which will take effect on October 29, 2018. The proposed rules will be subject to a 60-day public comment period.

As we have previously reported, the Act will require employers to provide eligible employees with paid leave for: (i) their own medical needs; (ii) medical needs of a covered family member; (iii) certain needs resulting from the employee, or a family member of the employee, being a victim of domestic or sexual violence; (iv) an employee's inability to work because of a closure of the employee's workplace, or the school or place of care of a child of the employee, due to a public health emergency; or (v) time needed by an employee to attend a child's school-related conference, meeting or event as requested or required by the school.

Eligible employees must be permitted to accrue sick leave at a rate of one hour of sick leave for every thirty hours worked in a benefit year (the "accrual method"). Alternatively, an employer may provide its employees, at the beginning of a benefit year, the full amount of sick leave that each employee would be entitled to accrue (the "advancing method").

The Department's proposed rules provide some additional clarity with respect to several provisions of the Act. Some noteworthy aspects of the proposed rules include:

Calculating and Recording Available Paid Sick Leave

- For purposes of calculating available paid sick leave, the Act and the proposed rules define "benefit year" as any period of twelve consecutive months as established by the employer. The proposed rules state that once the employer has established a benefit year, in the event the employer proposes to change the benefit year going forward, the employer would be required to provide written notice to the of Labor and Workforce Development ("Commissioner") at least 30 calendar days prior to

the proposed change. The written notice would be required to include, among other things, the reason for the proposed change and a list of current employees with corresponding contact information and a history of accrual, use, payment, payout, and carry-over of earned sick leave for each employee for the preceding two benefit years.

- An employer would not be required to maintain records documenting the hours worked by exempt employees, but rather has the option of either recording the actual hours worked by that employee for the purpose of calculating earned sick leave accrual or presuming, solely for the purpose of calculating earned sick leave accrual, that the employee works 40 hours per week.
- Where an employee is terminated, laid off, furloughed, or otherwise separated from employment and where the employee is reinstated or rehired in New Jersey by the same employer within six months of the separation, any unused earned sick leave accrued by or advanced to the employee prior to the separation would be required to be returned to the employee upon rehire or reinstatement.

Use and Documentation of Paid Sick Leave

- The Act defines a covered "family member" broadly as the "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." The proposed rules provide that a "close association" would include any person with whom the employee has a significant personal bond that is or is like a family relationship regardless of biological or legal relationship.
- Under the Act, where an employee's need to use paid sick leave is foreseeable, the employer may prohibit the employee from using sick leave on certain dates. Pursuant to the proposed rules, these "certain dates" would be limited to "verifiable high-volume periods or special events, during which permitting the use of foreseeable earned sick leave would unduly disrupt the operations of the employer." The proposed rules provide specific examples of what may constitute a high volume period or a special event. The proposed rules also state that an employer may require an employee seeking to use paid sick leave for an unforeseeable purpose on a given "certain date" to provide reasonable documentation that the leave is being taken for a permissible purpose under the Act (in addition to the ability of employers to request reasonable documentation when an employer is for three or more consecutive days).

- For unforeseeable uses of paid sick leave, the proposed rules state that if an employer wishes to require that employees provide reasonable notice of the need for such leave, the employer must inform the employees of such notice requirement in advance. If the employer fails to provide such advance notice, an employee must be permitted to take the unforeseeable leave "without having provided the employer with any prior notice, practicable, or otherwise."
- Where an employee would otherwise be eligible to use paid sick leave under the Act, the proposed rules state that an the employee would be permitted, with the employer's consent, to choose to work additional hours to compensate for the hours of work missed, rather than use paid sick leave. However, an employee could not be required to work additional hours to compensate for work missed due to the use of paid sick leave.
- With respect to payment of sick leave, the proposed rules provide guidance surrounding the permissible rate of sick leave pay in circumstances when an employee has two or more different jobs for the same employer or where employees are paid overtime, on commission, with tips, or in a piecework basis.

Notice Requirements

- With respect to the requirement that employers "conspicuously" post a notice regarding employee rights and responsibilities under the Act, a posting of the notice on the employer's internet or intranet site or sending the notice via e-mail would satisfy such requirement.

Penalties

- An employer that knowingly and willfully violates the Act would be subject to a fine of not less than $100 and no more than $1,000 and/or not less than ten days and no more than ninety days of imprisonment for the first offense. Upon a second offense, the fine would be no less than $500. Further, if the Commissioner finds that an employer has violated the Act, he or she would be able to assess and collect administrative penalties in the amount of $250 for the first violation and between $250 and $500 for a second violation.
- If an administrative penalty is placed on an employer, the employer would be entitled to a hearing on the issue. The Commissioner would be authorized to supervise the payments of amounts owed to employees under the Act, and employers would be required to pay the Commissioner an administrative fee, calculated as a percentage of the gross amounts due to the aggrieved employees.
- Each week during which an employee has not been provided the prescribed amount of earned sick leave would constitute a separate offense under the Act.

* * *

A public hearing on the new rules will be held on November 13, 2018 and written comments will be accepted until December 14, 2018. Notably, however, the rules will yet not be effect when the law becomes effective on October 29, 2018.

View Original

Related Professionals

- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel