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Westchester County, New York to Require Paid Leave for Victims of Domestic Violence

Law and the Workplace on **May 17, 2019**

Effective October 30, 2019, Westchester County, NY employers will be required to provide paid leave to employees who are victims of domestic violence or human trafficking. Leave under the new ordinance will be in addition to paid time off already required to be provided to employees under the Westchester County paid sick leave law, which took effect on April 10, 2019.

Covered Employees and Use of Leave

Under the new law, employees working in Westchester County for more than 90 days in a calendar year will be eligible to use up to 40 hours of paid leave per year for covered purposes relating to the employee being a victim of domestic violence or human trafficking ("safe time"). Domestic violence also includes certain "family offense matters," which are defined in detail in the ordinance, but which include criminal acts of harassment, sexual abuse or misconduct, stalking, and identity theft between current or former spouses, parents and children, or members of the same family or household. Covered employees may use safe time to attend or testify in a criminal or civil court proceeding relating to domestic violence or human trafficking or to relocate to a safe location.

Unlike under the Westchester County paid sick leave law, safe time does not accrue, but rather is available to an eligible employee on an as-needed basis, up to 40 hours per year. The ordinance does not permit employers to set a minimum daily increment of use, so employees may determine the amount of safe time needed if less than a full day.

Employee Notice and Documentation Requirements

When the need for safe time is foreseeable, employees can be required to make a good faith effort to provide advance notice, as well as to schedule the use of leave in a manner that does not "unduly disrupt" the employer's operations. Employers may request reasonable documentation from employees that safe time has been used for a covered purpose, regardless of the duration of the leave. Reasonable documentation may include a copy of a police report, subpoena, or affidavit from an attorney or victims' assistance organization.

Confidentiality and Anti-Retaliation

The ordinance requires employers to keep confidential any information about an employee or family member obtained solely for purposes of safe time leave, except if disclosure is required by law or the employee gives written permission for disclosure. Any "health or safety information" obtained by an employer in this regard must also be maintained on a separate form and in a separate file from other personnel information.

Employers are prohibited from interfering with an employee's exercise of rights under the ordinance or retaliating against an employee for their use of safe time or attempt to enforce their rights under the law. Specifically, the law prohibits employers from including safe time as an absence that may lead to or result in discipline, discharge, demotion, or suspension.

Employer Notice Requirements

Employers will be required to provide employees with a copy of the ordinance and "written notice of how the law applies to that employee" within 90 days of the effective date of the law (*i.e.*, January 28, 2020) or upon commencement of employment, whichever is later. Employers also will be required to display a copy of the ordinance and a poster in a conspicuous area accessible to employees. It is unclear whether the County plans to issue any form notices to satisfy these requirements.

Remedies Available

Employees claiming a violation of the ordinance may pursue their complaint with the Westchester County Department of Weights and Measures – Consumer Protection or bring a private right of action. Employees may recover the greater of $250 or three times the wages that should have been paid for each instance of undercompensated safe time taken, and $500 for each instance where employees have been unlawfully denied requested safe time. Other available remedies include reinstatement and back pay, attorneys' fees, the costs of an administrative hearing, and other monetary and equitable relief.

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