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Nevada Labor Commissioner Issues Advisory Opinions Regarding Paid Personal Leave Law

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As we previously reported, Nevada has enacted a personal leave law, which, effective January 1, 2020, will require private employers with 50 or more employees in Nevada to provide certain employees working in the state with up to 40 hours of paid leave per year, to be used for any purpose, including non-medical personal reasons. To that end, the Nevada Labor Commissioner issued two advisory opinions regarding the new law.

While the law applies to employers with 50 or more employees in Nevada, it is silent on how the 50 employee-threshold should be calculated. In its guidance, the Labor Commissioner addressed this by applying standards from the FMLA; specifically, a covered employer is one that employs 50 or more employees in 20 or more consecutive or nonconsecutive workweeks in the current preceding calendar year. Part-time employees and employees of a joint employer or successor in interest count as part of the 50-employee threshold. However, temporary, seasonal, and on-call employees do not count and are exempt from coverage.

The law does not further define temporary, seasonal, or on-call employees but in its guidance, the Labor Commissioner has clarified that a temporary employee is defined as one who works less than 90 days on a temporary or occasional basis; a seasonal employee is defined as one who works less than 90 days for a specific season; and an on-call or per-diem employee is one who is called to work on an hourly or daily basis based on the employer's need. Importantly, the Labor Commissioner concluded that any work assignment exceeding 90 days may trigger a presumption of coverage, and recommends employers track hours worked by short-term and on-call employees.

Under the law, employees must give notice of their intent to use leave “as soon as practicable.” Looking to the FMLA rules as a model, the Labor Commissioner explained that while employers should not require advance notice for unforeseeable absences (e.g., emergencies, unexpected illnesses and injuries), 30 days “would be optimal notice for events where the employee knows they need to take paid leave.” Employers should establish a notice requirement in writing that is provided to and signed for by the employee.

Notably, an employer is exempt from coverage if it already provides an equivalent amount of paid leave (whether pursuant to a collective bargaining agreement or other contract, agreement, or policy) to all employees who would otherwise be covered by the law. In other words, such employees would have to accrue at least 0.01923 hours (or approximately 1.15 minutes) of paid leave for every hour worked, up to 40 hours per year. The Labor Commissioner determined that based on the plain and unambiguous language of the so-called existing policies exemption, “employers already providing leave that matches or exceeds” the minimally required leave amount are “explicitly exempt from the other requirements” of the law. However, the Labor Commissioner recommends that employers adopt qualifying policies before the law’s effective date. In a separate opinion, the Labor Commissioner opined that this exemption applies to a collective bargaining agreement under which paid leave benefits are a non-delineated component of a covered employee’s base wage, the value of which equals or exceeds the minimally required leave amount.

With less than two months until the law’s effective date, employers in Nevada should review and, where necessary, revise their existing policies to ensure compliance with these new requirements.

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