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New Jersey's New Law Requires Unpaid Leave for Victims of Domestic or Sexual Violence

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On July 17, 2013, New Jersey Governor Chris Christie signed S-2177 – the New Jersey Security and Financial Empowerment Act ("NJ SAFE Act") – to require that employers provide unpaid leave to employees affected by domestic or sexual violence. New Jersey joins several states with similar laws, while other states and the U.S. Congress have proposed comparable legislation. New Jersey's new law takes effect on October 1, 2013. This alert discusses its coverage, requirements, and remedies.

Coverage

The NJ SAFE Act covers all "employers" who employ twenty-five or more employees for each working day over the course of twenty or more weeks in the then current or immediately preceding calendar year. For an "employee" to be covered, he or she must be employed for at least twelve months by an employer and have worked a minimum of one-thousand hours during the immediately preceding twelve-month period.

Requirements

Under the NJ SAFE Act, an employee who is the victim of domestic or sexual violence[1] may receive a maximum of twenty days[2] of unpaid leave in the twelve months following the incident. The employee also may take leave to assist a child, parent, spouse, domestic partner, or civil union partner (hereinafter, "related individual") who is victim to such violence.[3] The twenty-day leave period may be taken intermittently in intervals of no less than one day.

The NJ SAFE Act specifically provides that an employee may take leave to:

- Seek medical attention for, or recover from, injuries caused by domestic or sexual violence to the employee or a related individual;

Obtain services from a victim services organization for the employee or a related individual;

- Receive psychological or other counseling for the employee or a related individual;
- Engage in activities to increase the safety of the employee or related individual, such as temporarily or permanently relocating;
- Seek legal assistance or remedies to ensure the health and safety of the employee or related individual; or
- Attend, participate in, or prepare for a related court proceeding concerning the employee or related individual.

When it is foreseeable that leave will be necessary, employees must provide the employer with written notice. Notice should be provided "as far in advance as is reasonable and practical under the circumstances." In addition, the employer may request that the employee provide documentation of the domestic or sexual violence, which may take the form of:

- a domestic violence restraining order or other documentation of equitable relief;
- a letter or other written documentation from the county or municipal prosecutor documenting the domestic or sexual violence;
- documentation of the conviction of the aggressor for the domestic or sexual violence;
- medical documentation of the domestic violence or sexually violent offense;
- certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency or Rape Crisis Center that the employee or related individual is a victim of domestic or sexual violence; or
- other documentation or certification by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or related individual in coping with domestic or sexual violence.

The NJ SAFE Act also requires that employers notify employees of their rights and obligations under the statute by posting a conspicuous notice in the workplace,[4] and using other "appropriate means" to keep employees informed.

Remedies

Pursuant to the NJ SAFE Act, an employer may not discharge, harass, or otherwise discriminate or retaliate against an employee who has taken or requested leave. An employee may bring a civil action against an employer within one year of an alleged violation of the law.[5] All remedies in common law tort actions are available to the employee, as well as:

- a civil fine of between $1,000 and $2,000 for the employer's first violation and additional fines of up to $5,000 for each subsequent violation;
- an injunction to restrain the continued violation of the law;
- reinstatement of the employee to the same or equivalent position;
- reinstatement of full fringe benefits and seniority rights;
- compensation for any lost wages, benefits or other remuneration; and
- payment of reasonable costs and attorney's fees.

Takeaway

New Jersey employers should begin familiarizing themselves with the NJ SAFE Act and should prepare to comply with its requirements. This includes determining whether existing leave policies are consistent with the new law and, if not, updating or adjusting such policies accordingly. Employers also must ensure compliance with the notice provisions of the statute, and will need to obtain the form of notice prescribed by the Commissioner of Labor and Workforce Development for posting in the workplace. Please contact your Proskauer relationship attorney for further guidance on compliance.

[1] "Domestic violence" and "sexual violence" are defined by statute.

[2] While each incident of domestic or sexual violence constitutes a separate offense for which an employee may take leave, the employee may not surpass the twenty days of leave permitted under the statute in any twelve-month period.

[3] Under the NJ SAFE Act, an employer may require that the employee take leave concurrently with any accrued paid vacation leave, personal leave, or medical or sick leave. Along those lines, when an employee requests leave for a reason covered by both the NJ SAFE Act and the New Jersey Family Leave Act (NJFLA) or the federal Family and Medical Leave Act (FMLA), the leave runs simultaneously.

[4] New Jersey's Commissioner of Labor and Workforce Development is to prescribe the form and manner of such notice.

[5] A civil action is the "sole" course of redress permitted under the law.

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