

Alert | Labor & Employment



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New Jersey Adopts State-Wide Mandatory Paid Sick Leave

Earlier this month, New Jersey Governor Phil Murphy signed a much-anticipated state-wide paid sick leave law. The law, which will go into effect Oct. 29, 2018, requires all New Jersey employers – regardless of size – to provide paid sick leave to their employees, whether full- or part-time. Notably, while dubbed the “paid sick leave bill,” the law also requires employers to pay “sick” leave to employees absent from work for reasons wholly unrelated to their own or a family member’s illness. In this GT Alert, we outline the law’s key provisions.

Accrual of Paid Sick Leave

Employees accrue one hour of earned sick leave for every 30 hours worked up to a required minimum of 40 hours. (Employers may of course choose to exceed this amount.) Employers are not required to allow employees to accrue more than 40 hours of leave per year, or carry unused leave that exceeds 40 hours forward to the next year. Leave begins to accrue for existing employees on Oct. 29, 2018, the act’s effective date, unless they accrued such leave previously. Employees hired after Oct. 29, 2018, start to accrue leave the day their employment begins. Leave may be used 120 days after the employee starts work, and thereafter as it is accrued.

Permitted Uses of Paid Sick Leave

Consistent with its name, the law primarily covers absences due to (i) an employee’s own physical or mental illness, (ii) the physical or mental illness of a family member, or (iii) tending to preventive care.

“Family members” are broadly defined to include relatives such as a child, grandchild, sibling, spouse, domestic/civil union partner, or parent, and “any other individual related by blood to the employee, or whose close association with the employee is the equivalent of a family relationship.”

Beyond illness, sick leave must also be paid to an employee who misses work as a result of domestic or sexual violence, whether experienced by the employee personally or by a family member. Such leave may be used to obtain medical attention, counseling, or legal services, including securing a restraining order or preparing for a related civil or criminal court proceeding.

Workplace closings and parent-teacher conferences are also covered. If an employee cannot report to work because the workplace is closed due to an epidemic or other “public health emergency” (not defined), or if his or her child’s school or care facility is closed for the same reason, the employee is entitled to paid leave. Paid leave must also be provided to employees who miss work to attend a conference or meeting that a school administrator or teacher “request[s] or require[s],” or to attend a meeting concerning care provided to a child with a particular health condition or disability.

Where an employee’s need to take paid sick leave is foreseeable, the employer may require no more than seven calendar days notice of the employee’s intention to take paid sick leave. Where the need to take leave is not foreseeable, however, the employee only need give notice “as soon as practicable,” provided the employer previously notified the employee of this requirement. If the employee seeks leave for three or more consecutive days, the employer may require “reasonable documentation” showing the leave is taken for a covered purpose.

Postings and Recordkeeping Requirements

The law requires employers to communicate these paid sick leave rights to their employees, “in a form issued by the commissioner [of Labor].” Such notification must advise employees not only of their paid sick leave rights, but also the remedies available if their employer fails to provide the required benefits or retaliates against an employee for exercising his or her rights under the act. Employers must post the notice in a conspicuous location and provide each employee with a written copy of the notification upon hire or the employee’s request.

The law also requires employers to maintain records documenting the hours that their employees worked and the earned sick leave employees have utilized. Such records must be maintained for a period of five years, and made available to the Department “upon demand” for purposes of monitoring compliance. If an employee files a claim to recover paid sick leave, and the employer cannot demonstrate it has maintained such records, a presumption arises that the employer failed to provide the required paid leave “absent clear and convincing evidence otherwise.”

Penalties and Enforcement

As with the New Jersey Law Against Discrimination and other statutes, employers may not retaliate against employees who exercise their rights under this act. This law, however, goes even further. If an employee files a complaint alleging a violation of this statute or engages in a variety of other protected activities (including merely “inform[ing] any person of his or her rights” under the law), and the employer takes “adverse action” against that employee within 90 days of that filing, a rebuttable presumption arises that the employer took the adverse action with retaliatory intent.

Employers who violate the law are subject to the same penalties and remedies available under the New Jersey State Wage and Hour Law, which provide for both monetary penalties and even potential jail time.

Affected employees may pursue their own civil action to recover paid leave they claim was denied, together with costs and attorneys fees in the court's discretion. Employees may also recover actual damages the employee suffered "plus an equal amount of liquidated damages."

Preemption

In the "silver lining" category, the law preempts similar laws previously enacted by a county or municipality, and commands such entities to refrain from pursuing such legislation going forward. Thus, employers will no longer face a patch-work of varying local rules and obligations.

Takeaways

Many employers who already provide paid time off (PTO) for personal days, vacation days, and sick days may already be in compliance with the statute, provided the leave accrues at a rate equal to or greater than the law provides. Such employers should review their PTO policies to ensure they meet the minimum standards under the new law. All employers, moreover, must inform their employees about the new law and be mindful of the five-year record-keeping requirements. In an attempt to steer clear of the retaliation penalties, particularly the rebuttable presumption of retaliation if action is taken within 90 days of requesting leave, employers (with the assistance of Human Resources) may wish to enhance their review of contemplated adverse employment actions to minimize exposure.

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