
NJ Enacts Leave Law to Protect Victims of Domestic Violence and Sexual Assault, Imposes New Obligations on Employers

Legal Alert

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New Jersey is joining the small but growing number of states expanding workplace protections for victims of domestic violence. Beginning October 1, 2013, New Jersey employers with at least 25 employees must provide up to 20 days of unpaid leave to employees who are victims of domestic violence and sexual assault. The expanded rights provided to employees under the New Jersey Security and Financial Empowerment Act ("SAFE Act") (law S2177) impose new and important obligations on employers. The City of Philadelphia has had a similar ordinance, known as the Domestic Violence Unpaid Leave Law, since 2009, which requires covered employers in the city to provide up to eight weeks of unpaid leave for victims of domestic violence.

Overview

Under New Jersey's SAFE Act, employers must allow eligible employees who are victims and/or whose family members (children, parents, spouses, domestic partners or civil union partners) are victims of domestic violence or a sexually violent offense to take up to 20 days of unpaid leave in the 12-month period following an incident. Each incident of domestic violence or sexually violent offense is considered a separate offense for which an employee is entitled to unpaid leave, provided that the employee has not exhausted the allotted 20 days for the 12-month period. When an employee or an employee's family member has been a victim of domestic violence or sexual assault, the employee may request leave for one of the following reasons:

1. Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence
2. Obtaining services from a victim services organization
3. Obtaining psychological or other counseling
4. Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the victim from future domestic or sexual violence or to ensure economic security
5. Seeking legal assistance or remedies to ensure the health and safety of the victim, including preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence
6. Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence

Leave Timing and Notification

The SAFE Act protections apply to employees who have been employed at least 12 months and worked at least 1,000 base hours during the 12-month period immediately preceding the leave. Employees who wish to exercise their rights to leave under the SAFE Act, must provide written notice as far in advance as is reasonable under the circumstances. Employers may require the employee provide written documentation of the incident, and the SAFE Act lists specific forms of documentation that must be deemed sufficient, including, court orders, letters from prosecutors, conviction records, and medical records.

The leave may be taken intermittently in intervals of no less than a day. An eligible employee may elect, or an employer may require the employee, to use any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee during any part of the 20-day period of unpaid leave provided under the SAFE Act. In such case, any paid leave provided by the employer, and accrued leave pursuant to established policies of the employer, run concurrently with the unpaid leave provided. The employee must receive pay pursuant to the employer's applicable paid leave policy during the period of otherwise unpaid leave. If an employee requests leave for a reason covered by both the SAFE Act and the Family Leave Act or Family and Medical Leave Act, the leave counts simultaneously against the employee's entitlement under each respective law.

Additional Employer Obligations

To comply with the SAFE Act, employers must conspicuously display a notice of employees' rights and obligations under the SAFE Act. A form of this notice will be published by the Department of Labor and Workforce Development. The Act also requires a covered employer to use "other appropriate means to keep its employees so informed," but it is silent as to what other means may be used.

Until further guidance is issued, employers should consider including notifications of SAFE Act rights in employee handbooks, on Intranet sites, and in other places where the employer advises employees about their rights to leave.

Consistent with New Jersey's other anti-discrimination and anti-retaliation laws, the SAFE Act expressly forbids employers from discriminating or retaliating against employees who exercise their rights under the SAFE Act and provides a range of available damages, which include civil penalties, lost wages, and attorneys' fees.

To learn more about complying with the SAFE Act or to address other labor and employment issues, we invite you to contact Adam E. Gersh or any member of Flaster Greenberg's Labor & Employment Practice Group.