
Five Things New Jersey Employers Need to Know: Paid Sick Leave, Medical Marijuana & More

October 29, 2018

Last week, Adam E. Gersh, Esquire, and Jeremy S. Cole, Esquire, co-presented a seminar addressing hot topics in New Jersey employment law, highlighted by a discussion of New Jersey's recently-passed Paid Sick Leave Law. The presentation can be viewed through Facebook Live.

Here are the top takeaways from the presentation:

- 1. New Jersey Paid Sick Leave Law: Overview.** On October 29, 2018, New Jersey's new Paid Sick Leave Law goes into effect. The law requires employers to grant employees one hour of paid sick time for every 30 hours worked up to 40 hours per benefit year. The law requires most private employers to participate, with exceptions for construction workers employed under a CBA, public workers, and *per diem* healthcare employees. The law includes part-time and seasonal employees. The law defines "sick time" broadly to not only include things traditionally considered as "sick time" (such as for diagnosis, care, treatment and/or recovery related to an employee's mental or physical illness), but also to take care of sick family members, certain absences resulting from domestic or sexual violence, child care, and attending school-related functions for an employee's child. The law includes an anti-retaliation provision that prohibits employers from firing employees for exercising their rights under the law. Regulations to further clarify this law are proposed, but will not be in place by the time the law goes into effect.
- 2. New Jersey Paid Sick Leave Law: Compliance.** To comply with the law, employers have to make two primary decisions: accrual vs. advance and carryover vs. buy out. The law permits employers to grant paid sick time to employees on an accrual basis, which means they will receive one hour of paid sick time for every 30 hours worked (up to 40 hours). Alternatively, employers may advance paid sick time to employees, such that employees receive some or all of their required 40 hours of paid sick time at the beginning of the benefit year. However, if an employer chooses an accrual basis, employees must be permitted to carry over up to 40 hours of paid sick time per benefit year, and the employer may offer employees an option to receive a buyout of all or 50% of unused leave at the end of the benefit year, but must allow a carry over for the employees who do not elect the buyout. If the employer chooses to advance sick time, the employer may require employees to receive a buyout of unused time at the end of the benefit year, and may choose to allow employees to carry over unused time into the next benefit year. In certain circumstances, paid time off may satisfy the law's requirements.

Continued

- 3. *Marijuana in the Workplace.*** With medical marijuana legal in New Jersey (and recreational marijuana supposedly coming soon), employers must be careful to navigate their interest in not having incapacitated employees with those employee's rights to use marijuana. Currently in New Jersey, employers have no duty to accommodate medicinal marijuana usage, because it remains illegal under federal law. However, this may be starting to change. One Massachusetts state court recently held that the fact that an employee's use of medical marijuana is in violation of federal law does not make it per se unreasonable for an employer to accommodate such usage. Another court upheld a state law that expressly prohibited firing and/or not hiring employees that use medical marijuana because of their medical marijuana usage. There is no way to know if or when New Jersey will follow these states' leads or maintain the status quo, but doing so could dramatically impact what employers can do with regard to employees' use of medical marijuana, including testing for the drug.
- 4. *New Jersey Equal Pay Act.*** The New Jersey Equal Pay Act requires equal pay for equal work, and prohibits pay discrimination based on any of the classes identified in the New Jersey Law Against Discrimination (e., race creed/religion, color, national origin, age, ancestry, nationality, marital status, sex, gender identity, disability, military service, sexual orientation, genetic/cellular information, family status, and source of lawful income/rent payment). The Act looks back six years from the last instance in a continuing violation, and provides for treble damages and attorney's fees to a successfully plaintiff. The Act also contains an anti-retaliation provision that prohibits employers from firing employees for exercising their rights under the Act. Finally, the law prohibits salary history inquiries.
- 5. *Protections for disability and mental health.*** Under New Jersey law, an employer may not discriminate based not only on an actual disability or mental health issue, but even if the employer regards or perceives an individual as having a disability or mental health issue.