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Labor and Employment Alert: New Jersey Enacts Statewide Paid Sick Leave Law

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To the consternation of employers, New Jersey has had a patchwork of 13 local paid sick leave ordinances. That will end in October 2018 when New Jersey's newly enacted statewide paid sick leave law takes effect which will preempt all local sick leave ordinances. In return for uniformity, all employers in New Jersey – regardless of size – must now provide paid sick leave to their employees.

Covered employees and employers

Every employer must provide paid sick leave to its employees working in New Jersey. There is no exemption for small employers. "Employee," however, does not include "per diem health employees," which the law defines in detail, and construction workers governed by a collective bargaining agreement.

Accrual, usage, carryover and reinstatement of leave

Employees will accrue one hour of sick leave for every 30 hours worked (unless the employer frontloads the full allotment of leave as noted below). Employers are not required to permit employees to accrue, use, or carry forward from one year to the next, more than 40 hours of sick leave.

Instead of accruing leave, an employer may provide the full amount of leave on the first day of each benefit year. If the employer frontloads leave, then it must either pay out the full amount of unused leave in the final month of the benefit year or carry forward any unused leave to the next benefit year. However, the employer may pay out unused leave in one year only if it frontloads leave for the following benefit year.

Employers may continue to use PTO policies so long as the policy provides an equal or greater accrual rate and benefits.

Sick leave use

Employees may use sick leave beginning on the 120th calendar day after the employee commences employment, unless the employer agrees to an earlier date. Thereafter, employees may use sick leave as soon as it is accrued. An employer may not require that the employee find a replacement to cover the hours during which the employee is absent.

An employee may use sick leave:

- (1) for the diagnosis, care, or treatment of, or recovery from, his or her mental or physical illness, injury, or other adverse health condition, or for preventive medical care;
- (2) to aid or care for a family member for those same reasons;
- (3) for absence necessary due to domestic or sexual violence to obtain medical attention, victim services, counseling, relocation, or legal services;
- (4) when the employee is unable to work due to an epidemic, public health emergency, or because the presence of the employee or family member would jeopardize the health of others; or
- (5) to attend a school-related meeting in connection with the child's health conditions or disability.

Employers may discipline employees who use sick leave for other purposes.

An employer may choose the increments in which its employees may use sick leave, up to the maximum number of hours the employee was scheduled to work during that shift.

If an employee's need to use sick leave is foreseeable, an employer may require up to seven days' advance notice, and the employee must make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations. Employers may prohibit employees from using foreseeable sick leave on certain dates, and may require reasonable documentation if sick leave that is not foreseeable is used during those dates. If the reason is not foreseeable, an employer may require notice as soon as practicable. For leave of three or more consecutive days, an employer may require reasonable documentation that the leave is being taken for a permitted purpose.

Payment for unused sick leave

In the final month of the benefit year, an employer may offer to pay an employee for unused sick leave, which the employee can accept or reject. If the employee accepts, the employee may choose to be paid for the full amount or half of the unused leave. If the employee declines payment, or agrees to the half payment, the employee can carry forward any remaining leave. Employers are not required to pay out unused sick leave upon separation from employment.

Employee protections

Employers are prohibited from retaliating against employees who request or use leave, who file a complaint with the state, or who inform any other person of their rights. Employers also may not count leave as an absence that results in discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action. There is a rebuttable presumption of retaliation if adverse actions are taken against an employee within a certain time after taking leave.

Recordkeeping, posting and notice requirements

Employers must retain records documenting hours worked by employees and sick leave taken by employees for five years. Failing to do so creates a presumption that the employer failed to provide the leave. Employers must conspicuously post a state-issued notice of employee rights, including the amount of earned sick leave to which they are entitled and the terms of its use, and the remedies for failing to provide leave or for retaliation. Employers must provide each employee a written copy of the notification.

Conclusion

The law creates a private right of action that includes actual and liquidated (double) damages. So before the law takes effect in October 2018, employers should review their existing sick leave policy and either revise the policy to comply with the new requirements or adopt a policy that meets the requirements. Contact your Vorys lawyer if you have questions about New Jersey's new paid sick leave requirements.