Sills Cummis & Gross P.C.

Client Alert **Employment & Labor**

New Jersey and New York City Expand Employee Leave Rights

New Jersey and New York City have recently enacted laws that expand the circumstances under which covered employers are required to provide leave to their employees.

In New Jersey, the Security and Financial Empowerment Act ("SAFE") will enable employees whose lives have been impacted by domestic or sexually violent incidents to take up to 20 days of unpaid leave. In New York City, the Earned Sick Time Act will grant eligible employees with up to 40 hours per year in paid sick leave.

New Jersey Security and Financial Empowerment Act

On July 18, 2013, Governor Christie signed SAFE, which is expected to take effect on October 1, 2013. SAFE requires employers to grant 20 days of unpaid leave to employees who are either victims of a domestic or sexually violent incident themselves, or whose child, parent, spouse or domestic or civil union partner is so victimized. Employees seeking leave pursuant to SAFE will have up to one year following the triggering incident to do so.

SAFE applies to employers who employed 25 or more employees for at least 20 workweeks during the current or immediately preceding year. Covered employers

are required to provide notice to employees of their rights under SAFE in the form and manner to be prescribed by the Commissioner of Labor and Workforce Development. To benefit from SAFE, an employee must have worked for his or her employer for a minimum of 12 months, and for a minimum of 1,000 hours during that 12-month period.

The new statute does not bar an employer from requiring an employee to provide documentation – such as a restraining order or the certification of a social worker – substantiating the domestic or sexually violent incident entitling the employee to leave. The employee may elect, or the employer may require an employee, to use accrued vacation leave, personal leave, or medical or sick leave during any portion of the 20-day leave period authorized by SAFE.

Under SAFE, an employee who is wrongfully denied leave may commence a civil action against his or her employer. The aggrieved employee may seek reinstatement, back pay, and attorney's fees, and the violating employer may be exposed to civil penalties of up to $2,000 for its first violation, and up to $5,000 for subsequent violations.

NYC Earned Sick Time Act

On June 27, 2013, the New York City Counsel overrode Mayor Michael Bloomberg's veto of the Earned Sick Time Act (the "Act"), which will require certain employers to provide the equivalent of up to five days of paid sick leave per year to covered employees. Certain employers in the manufacturing sector are not covered employers.

The Act's provisions will be implemented in stages, depending on employer size. In addition, the effective date is tied to New York City's economy: assuming the City's economy, as determined by certain economic indicators, is as healthy, or more so, on December 16, 2013 than it was in January 2012, the Act will go into effect on April 1, 2014.

As of the Act's effective date, covered employers with 20 or more employees will be required to provide up to five paid sick days annually to all persons employed for at least four months. Employers with 15 or more employees must comply with the Act effective October 1, 2015. Small employers who do not employ the requisite number of employees to trigger the paid leave requirements will be required to provide up to 40 hours of *unpaid* sick leave to their covered employees.

Employers with current paid leave policies, such as vacation or PTO policies, that provide an employee with sufficient paid leave to meet the accrual requirements, and that permit such paid leave to be used "for the same purposes and under the same conditions as paid sick leave," are *not* required to provide additional paid sick time.

The Act covers employees employed within New York City for more than 80 hours in a calendar year and provides that a covered employee may use such leave for absences related to:

1. the employee's own "mental or physical illness, injury or health condition or need for medical diagnosis care or treatment;"
2. "care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or who needs preventative medical care;" or
3. "closure of such employee's place of business…due to a public health emergency or such employee's need to care for a child whose school or childcare provider has been closed…due to a public health emergency."

The Act grants eligible workers with "a minimum of one hour of sick time for every thirty hours worked." Sick time begins to accrue "at the commencement of employment or on the effective date of [the Act]," but may not be utilized by an employee until he or she has worked for his or her employer for at least four months. Employers may set a minimum increment for the use of sick time of no more than 4 hours. While accrued, unused sick leave may be carried over from year to year, employees may be limited to using 40 hours of leave per calendar year.

Employees can be required to provide reasonable advance notice of the need for sick leave, and documentation from a licensed health care provider substantiating the need for and duration of the leave, though an employer may not require disclosure of the specific nature of the employee's or the employee's family member's medical condition, and must treat any medical information it obtains as confidential.

Upon commencement of an eligible employee's employment, the employee must receive notice of his or her rights under the Act, which must be in both English and the primary language spoken by the employee, and must inform the employee regarding (a) "the accrual and use of sick time," (b) "the calendar year of the employer," and (c) "the right to be free from retaliation and to bring a complaint."

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An employee alleging a violation of the Act must file a complaint with the New York City Department of Community Affairs ("DCA") within 270 days of the date upon which the employee knew or should have known of the alleged violation. Violations of the Act expose an employer to penalties payable to aggrieved employees – which may exceed $2,500 in certain instances – as well as to penalties payable to New York City of up to $500 for a first time offense, $750 for a second offense within two years of the first, and $1,000 for any offense thereafter.

Employers must keep records of all notices, hours worked, and other records documenting their compliance for at least two years and allow the DCA to audit those records upon request.

Based on these new statutory requirements, covered employers will need to review and update their applicable policies. If you need assistance with doing so, or have other questions, please feel free to contact one of the attorneys in our group.

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