

Client Alert **Employment & Labor**

Federal Immigration and NJ Paid Sick Leave Developments Impacting Employers

President Obama Announces Executive Actions on Immigration

On November 20, 2014, President Obama announced his multi-faceted plan for a series of executive actions on immigration, known as Immigration Accountability Executive Actions. The President outlined three goals for his actions: to provide additional resources for law enforcement to help curb illegal border crossings; to make it easier for high-skilled and educated immigrants to stay in the United States; and to deal responsibly with undocumented immigrants who already live in this country. These measures will substantially impact the business community.

Key aspects of the Immigration Accountability Executive Actions which will impact employers include:

- Providing certain undocumented immigrants the opportunity to request temporary relief from deportation and eligibility for work authorization if they come forward and pass criminal and national security background checks, pay their taxes, and pay a fee. This program will likely affect 4 to 5 million people. If granted “deferred action” under this new policy, an individual will be permitted to remain in the United States and apply for work authorization for a renewable period. However, deferred action does not grant legal status or a pathway to citizenship.

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- Providing portable work authorization for high-skilled workers awaiting lawful permanent resident (LPR) status and their spouses. Under the current system, employees with approved LPR applications often wait many years for their visa to become available. The Department of Homeland Security (DHS) will make regulatory changes to allow these workers to move or change jobs more easily. DHS is finalizing new rules to give certain H-1B spouses employment authorization as long as the H-1B spouse has an approved LPR application.
- Enhancing options for foreign entrepreneurs. DHS will expand immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment, and generating revenue in the United States. The criteria will include income thresholds so that these individuals are not eligible for certain public benefits like welfare or tax credits under the Affordable Care Act.
- Strengthening and extending on-the-job training for students who are science, technology, engineering, or mathematics (STEM) graduates of United States universities. DHS will propose changes to expand and extend the use of the existing Optional Practical Training (OPT) program and require stronger ties between OPT students and their colleges and universities following graduation.
- Streamlining the process for foreign workers and their employers. DHS will clarify its guidance on temporary L-1 visas for foreign workers who transfer from a company's foreign office to its United States office. DOL will take regulatory action to modernize the labor market test that is required of employers that sponsor foreign workers for immigrant visas while ensuring that American workers are protected.
- Modernizing the visa process. The President issued a Memorandum directing an interagency group to recommend areas for improvement to modernize the system, reduce costs, eliminate redundancy, reduce burdens on families and employers and eliminate fraud. The President directed these agencies to provide recommendations for reform within 120 days of November 21, 2014.

We will continue to provide updates on these employment-related immigration measures as more information becomes available. If you have any questions, please contact counsel.

Trenton and Montclair Enact Sick Leave Laws; Statewide Legislation May Follow

The Trenton and Montclair Ordinances

On November 4, 2014, Trenton and Montclair became the seventh and eighth municipalities in New Jersey – joining Newark, Jersey City, Paterson, Passaic, Irvington, and East Orange – to mandate that employers provide paid sick leave. In both municipalities, voters supported paid sick leave referendums by overwhelming majorities. In Trenton, the new ordinance is scheduled to take effect on March 4, 2015. Montclair's ordinance will take effect on or around that same date.

The new ordinances require employers with 10 or more employees, or employers of any size in the child care, home health care, or food service industries, to provide up to 40 hours per year of paid sick leave. Unless they are in one of the foregoing industries, employers with fewer than 10 employees need only provide 24 hours of such leave.

An employee may use paid sick leave:

- For treatment or diagnosis of a mental or physical illness, injury, or health condition, or for preventative medical care;
- To care for a family member dealing with any of the foregoing;
- If his or her place of business is closed by order of a public official due to a public health emergency; or
- To care for a family member whose presence in the community, health authorities or health care providers determine, would jeopardize the health of others.

Once the ordinances take effect, an employee will accrue one hour of paid sick leave for every 30 hours he or she works. While accrued but unused sick time may be carried over from year to year, an employee may not carry over in excess of 40 hours of such time. New employees begin to accrue sick time on the day they begin work, however, they may not use such time until the 90th day of their employment.

Employers will be required to maintain records of hours worked and sick time used by each employee, and must allow the New Jersey Department of Health and Human Services reasonable access to such records. In addition, employers must provide

written notice to new and existing employees of their sick leave rights, and must display posters containing this information in a conspicuous and accessible location.

Employers will be prohibited from interfering with any employee's exercise of his or her sick leave rights, and may not retaliate against any employee for using, or requesting, paid sick leave.

In the coming months, employers in Trenton and Montclair must revise their current leave policies to provide for the accrual and use of paid sick leave by eligible employees in accordance with the recent ordinances. If they have not done so already, employers in Newark, Jersey City, Paterson, Passaic, Irvington, and East Orange must immediately do so as well.

Bill for Statewide Paid Sick Leave

On October 27, 2014, the New Jersey Assembly reportedly favorably and with committee amendments, Assembly Bill No. 2345 (the "Bill") to provide for statewide paid sick leave, as described below. However, the future of the Bill is uncertain at this time, since the Bill has not yet been passed by the New Jersey Senate, and it is not clear whether Governor Christie would veto the Bill if passed by both houses.

The Bill provides for sick leave benefits in excess of those presently available under local ordinances. Specifically, it mandates that employers with 10 or more employees allow its employees to accrue up to 72 hours of paid sick leave per year, and that employers with fewer than 10 employees permit employees to accrue up to 40 such hours per year. Accrued but unused sick leave from one year would carry over to the next.

The Bill contemplates that paid sick leave may be utilized for, among other things:

- Time needed for diagnosis, care, or treatment of, or recovery from, an employee's mental or physical illness, injury or other adverse health condition, or for preventative medical care for the employee;
- To care for a family member dealing with any of the foregoing; or
- Absence needed due to circumstances resulting from the employee or family member being a victim of domestic or sexual violence, if the leave is to obtain medical attention, counseling, relocation, legal or other services.

Like the Trenton and Montclair ordinances, the Bill imposes certain recordkeeping and notice requirements on employers, and prohibits retaliation against employees for use or requested use of earned sick leave.

We will continue to monitor this issue. For advice on compliance with paid sick leave requirements, employers should consult counsel.

If you have any questions regarding information in this alert, or if you need more information, please contact one of the following Sills Cummis & Gross attorneys:

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