

NJ SAFE: New Domestic Violence Law Will Impact Employee Leave Policies

by Christina M. Michelson on August 9, 2013

The New Jersey Security and Financial Empowerment Act (NJ SAFE) is now law. The statute provides up to 20 days of leave for an employee who is the victim of domestic violence or sexual assault.

Coverage

The law applies to all public employers within the State of New Jersey. The law also applies to private employers in New Jersey with 25 or more employees. To be eligible, workers must be employed for at least 12 months, for not less than 1,000 base hours during the immediately preceding 12-month period. The law provides leave rights for victims of domestic violence and sexual assault as well their family members, which include a child, parent, spouse, domestic partner, or civil union partner.

Under the NJ SAFE Act, each incident of domestic violence or any sexually violent offense constitutes 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. The unpaid leave may be taken intermittently in intervals of no less than one day, within one year of the incident of domestic violence or sexual assault.

Qualifying Activities

Victims and their family members are entitled to leave for the purpose of engaging in any of the following activities as they relate to the incident of domestic violence or sexually violent offense;

- Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence;
- Obtaining services from a victim services organization;
- Obtaining psychological or other counseling;
- 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;
- Seeking legal assistance or remedies to ensure the health and safety of the victim; and
- Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

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 NJ SAFE Act. In such case, any paid leave provided by the employer, and accrued pursuant to established policies of the employer, shall run concurrently with the unpaid leave and, accordingly, the employee shall 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 the NJ SAFE Act and the New Jersey Family Leave Act or the federal Family and Medical Leave Act, the leave shall count simultaneously against the employee's entitlement under each respective law.

Remedies

The NJ SAFE Act prohibits discrimination or retaliation against an employee that takes or requests leave provided under the law or an employee who refuses to authorize the release of information deemed confidential. The sole enforcement means for violations of the law is a civil lawsuit. In addition to all remedies available in common law tort action, the court may order:

- An assessment of a civil fine of not less than \$1,000 and not more than \$2,000 for the first violation and not more than \$5,000 for each subsequent violation;
- An injunction to restrain the continued violation
- Reinstatement of the employee to the same position or to a position equivalent to that which the employee held prior to unlawful discharge or retaliatory action;
- Reinstatement of full fringe benefits and seniority rights;
- Compensation for any lost wages, benefits and other remuneration;
- Payment of reasonable costs and attorney's fees.

The law takes effect October 1, 2013.

If you have any questions about the NJ SAFE Act or would like to discuss the your company's compliance, please contact me or the Scarinci Hollenbeck attorney with whom you work.