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Handling Requests for Leave Due to Domestic Violence Issues

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Employers are well familiar with their obligations to afford qualified employees with health- and healthcare-related leave. Perhaps less familiar are employers' obligations to provide leave and other reasonable accommodations to employees as a result of issues related to domestic violence. As more states and cities are enacting legislation covering this type of leave, employers should, if they have not done so already, become more acquainted with the protections being mandated.

For instance, last year New Jersey joined at least a dozen other states in enacting legislation to provide leave and other protections to victims of domestic violence and sexual assault. Known as the "New Jersey Security and Financial Empowerment Act" or the "NJ SAFE Act," this law became effective on October 1, 2013, and it applies to all New Jersey public and private employers with 25 or more employees. It requires that employers provide up to 20 days of unpaid leave during any 12-month period to an employee who either was the victim, or whose child, parent, spouse, domestic partner, or civil union partner was a victim of an incident of domestic violence or sexually violent offense.

To be eligible for leave under the NJ SAFE Act, the employee must have been employed for at least 12 months and worked at least 1,000 base hours during the immediately preceding 12-month period. The employee may take the unpaid leave all at once or intermittently at one-day intervals. Leave can be taken for any of the

following reasons:

1. seeking medical attention for, or recovering from, physical or psychological injuries;
2. obtaining services from a victim services organization;
3. obtaining psychological or other counseling;
4. participating in safety planning, relocating temporarily or permanently, or taking other similar preventative actions;
5. seeking legal assistance for, or otherwise preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence; or
6. attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

In situations where the employee's need for the leave is foreseeable, the employee must provide the employer with written notice of the need for the leave "as far in advance as is reasonable and practical under the circumstances." The employer may require the employee to support his or her leave request with documentation of the domestic violence or sexually violent offense that is the basis for the leave, and it is considered sufficient documentation for the employee to provide: a restraining order; a letter from a county or municipal prosecutor; conviction paperwork; medical documentation of the domestic violence or sexually violent offense; a certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency or Rape Crisis Center; or other similar documentation or certification from a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or a qualified relative.

Eligible employees are entitled to the leave following each separate incident of domestic violence or sexual assault, unless the 20 days of leave for the 12-month period have already been exhausted. Employees may request and employers may require the employee to use any of his or her accrued paid vacation or personal leave, or medical or sick leave, during any part of the 20-day period of unpaid leave provided by the NJ SAFE Act, and the unpaid and paid leave would run concurrently. Additionally, if the employee requests leave for a reason that is also covered by the New Jersey Family Leave Act or the federal Family and Medical Leave Act, the leave will be counted simultaneously against the employee's entitlement under each respective law.

Importantly, New Jersey employers have a new obligatory posting in connection with this law. The new posting, a model of which is available [online](#), must be posted in a conspicuous location in the workplace. Additionally, the law requires that New Jersey employers "use other appropriate means to keep its employees so informed."

The NJ SAFE Act also requires that any information and documentation provided to an employer in support of an employee's leave request, and any information regarding the leave taken and any failure of an employee to return to work, must be retained in the strictest confidentiality, unless the employee voluntarily authorizes the disclosure in writing, or unless disclosure is required by a federal or State law, rule, or regulation. The NJ SAFE Act also contains a provision against discrimination, harassment, and retaliation.

The NJ SAFE Act provides an employee who believes his or her employer has violated the NJ SAFE Act with a private cause of action in the Superior Court of New Jersey, and this is the employee's sole remedy for a violation of the Act. An employee has one year from the time of the alleged violation to file such an action. In addition to common law tort remedies available to a prevailing plaintiff, the NJ SAFE Act authorizes civil fines (between \$1,000 and \$2,000 for a first violation and up to \$5,000 for a second or further violation), injunctive relief, reinstatement, lost wages, and attorney's fees.

New Jersey is not the only state to have acted recently to extend protections. In 2013, Oregon amended its domestic violence leave law, effective January 1, 2014, to apply to all employees when previously it had only applied to those who worked more than 26 hours per week and who had been employed at least 180 days prior to seeking leave. Like New Jersey, Oregon now has a posting requirement, and order forms may be found [online](#).

Cities are also taking measures of which employers should take note. Portland, Oregon, for instance, enacted a Protected Paid Sick Time Ordinance, effective January 1, 2014, that provides both part-time and full-time employees with up to 40 hours of paid time off not only for their own or their family's health-related reasons, but also to address issues covered by Oregon's domestic abuse leave law (domestic violence, sexual harassment, assault or stalking).

Employers should become familiar with the applicable laws in the states (and cities) in which they have employees and ensure that their policies and practices are up to date. Additionally, employers may want to consider updating their employment handbooks. As always, employers should consult with legal counsel if any questions arise.

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