

Management Alert



New Jersey SAFE

On July 17, 2013, New Jersey Governor Chris Christie signed into law “The New Jersey Security and Financial Empowerment Act” (“NJ SAFE Act”), which provides victims of domestic violence and sexual assault with 20 days of unpaid leave to participate in a range of activities. The NJ SAFE Act goes into effect on October 1, 2013. This law is likely to require many companies to modify their leave policies. Below is a brief summary of its provisions.

Coverage

The NJ SAFE Act applies to private employers in the state of New Jersey that employ 25 or more employees. Employees must be employed for at least 12 months and for not less than 1,000 base hours during the immediate preceding 12-month period to be covered under the NJ SAFE Act.

Leave rights

An employee in the state of New Jersey who is a victim of domestic violence or sexual assault or whose child, parent, spouse, domestic partner, or civil union partner was the victim is entitled to up to 20 days of unpaid leave during the 12-month period following a domestic violence or sexual assault incident, as needed, for the purposes of:

- seeking medical attention for, or recovering from, physical or psychological injuries;
- obtaining services from a victim services organization;
- obtaining psychological or other counseling;
- participating in safety planning, temporary or permanent relocating, or other actions to increase safety;
- seeking legal assistance or remedies; or
- attending, participating in, or preparing for court proceedings.

Each separate incident of domestic violence or sexual assault entitles an employee to unpaid leave, provided the employee has not exhausted the 20 days of leave for the 12-month period. Unpaid leave may be taken in intermittent intervals of no less than one day.

Concurrent Use With Paid Leave

An employee may choose, or an employer may require, the use of accrued paid vacation, personal, medical, or sick leave otherwise available to an employee during any part of the 20-day period of unpaid leave. 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 unpaid leave.

Effect on New Jersey and Federal Family Leave Laws

If an employee requests leave for a reason covered by both the NJ SAFE Act and the New Jersey Family Leave Act or the Federal Family and Medical Leave Act of 1993, the requested leave will simultaneously count against an employee's entitlements under both such laws.

Notice and Confidentiality

If foreseeable, an employee must provide an employer with written notice of needed leave under the NJ SAFE Act prior to taking such leave. The notice must be provided to an employer as far in advance as reasonably and practically possible.

Employers must post a notice of an employee's rights and obligations under the NJ SAFE Act in a form provided by the Commissioner of Labor and Workforce Development and use other appropriate means, such as posting on the Company Intranet or including this information in the employee handbook, to keep employees informed of their rights.

Employers may require documentation of a domestic violence or sexually violent offense to support leave taken under the NJ SAFE Act. If the employer requires such documentation, one or more of the following is sufficient:

- a restraining order or other documentation of relief issued by a court;
- a letter or other written documentation from the county or municipal prosecutor documenting the domestic violence or sexually violent offenses;
- documentation of a domestic violence or sexually violent offense conviction;
- medical documentation of the domestic violence or sexually violent incidents;
- certification from a certified Domestic Violence Specialist, a director of a designated domestic violence agency, or Rape Crisis Center; or
- other documentation provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or employee's child, parent, spouse, domestic partner, or civil union partner.

Any information provided to an employer for purposes of leave under the NJ SAFE Act is strictly confidential, unless disclosure is voluntarily authorized in writing by the employee or required by federal or state law or regulation.

Effect on Current Employee Benefits and Collective Bargaining

The NJ SAFE Act does not require or permit the reduction of benefits provided by an employer or collective bargaining agreement that are in excess of its requirements, and its provisions apply regardless of the date a collective bargaining agreement takes effect. In addition, employers cannot rescind or reduce any benefits as a result of the NJ SAFE Act.

Discrimination and Retaliation Prohibited

The NJ SAFE Act prohibits discrimination or retaliation against an employee that takes or requests leave provided under the NJ SAFE Act or an employee who refuses to authorize the release of information deemed confidential.

Penalties

A private civil action is the sole enforcement means for violations under the NJ SAFE Act. A civil action must be brought in NJ Superior Court within one year of the alleged violation. A court may award all remedies available in common law tort action, and may also award:

- 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 a continued violation;
- reinstatement to the same or equivalent position held prior to an unlawful discharge or retaliatory action;
- reinstatement of benefits and seniority rights;
- lost wages, benefits, and other remuneration; and
- reasonable costs and attorney's fees.

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