CLIENT ALERTS & INSIGHTS

Covid-19 Update for Employers: States and Municipalities Establishing New Vaccine-Related Protections for Workers

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As vaccines for the Covid-19 virus have become more abundant and available for U.S. citizens, states and cities have started to enact protections for employees in order to facilitate vaccinations. Some of these new laws make it unlawful for employers to retaliate against employees for receiving the vaccine during working hours or create new paid leave rights for employees. Employers with workers in the City of Chicago or New York State should take note of the following laws.

Chicago's Vaccine Anti-Retaliation Ordinance

Chicago's city council recently passed an ordinance granting protection to all employees *and independent contractors* to facilitate their receipt of Covid-19 vaccination. The new ordinance, SO2021-1219, became effective on April 21, 2021. This ordinance prohibits employers from retaliating against workers who receive the Covid-19 vaccine during working hours. The ordinance also prohibits employers from requiring that workers receive the Covid-19 vaccine only during non-working hours.

Under the ordinance, employers cannot take adverse action against workers in Chicago because they receive a Covid-19 vaccination during their scheduled work hours. If a worker elects to receive a Covid-19 vaccine, and that worker has paid sick leave or other accrued paid time off and requests to use that paid leave to obtain a vaccine, then an employer must allow the worker to use such paid leave for receipt of the Covid-19 vaccination. Note that this ordinance does not create a new paid leave obligation for instances in which an employee voluntarily elects to obtain the Covid-19 vaccine, but rather the ordinance creates the right for workers to use paid leave that already exists. However, there are additional obligations in the event an employer mandates that its workers receive the Covid-19 vaccine.

Employers that mandate that their workers receive Covid-19 vaccination must compensate workers for the time spent obtaining the Covid-19 vaccination, up to a maximum of four hours per dose, if the vaccination appointment occurs during working hours. This pay must be made at a worker's regular rate of pay. In the event an employer requires its workers to receive vaccinations, it cannot require that the worker use existing paid sick leave or other paid time off for the time incurred by the worker to receive the vaccination.

In the event an employer violates this ordinance, a worker has a private right of action and can bring claims for reinstatement, damages equal to three times the full amount of wages that would have been owed had the retaliatory action not taken place, any other actual damages directly caused by

the retaliatory action, and costs and reasonable attorneys' fees incurred. The City's Commissioner of Business Affairs and Consumer Protection or the Director of Labor Standards can also initiate action for violations of the Ordinance in an administrative hearing or in court. An employer found to have violated the Ordinance will also receive a fine between $1,000 and $5,000.

New York State's Paid Leave for Covid-19 Vaccination

New York State passed a new law granting employees new paid leave time to receive Covid-19 vaccination. This law has an effective date on March 12, 2021 and will remain in effect until December 31, 2022. Employers must provide all New York employees with "a sufficient period of time," up to four hours, of paid leave time per Covid-19 vaccine dose. Thus, this law can result in a maximum of 8 hours total for employees receiving two-dose vaccines, although it may be even greater in the event "booster" doses become necessary. This paid leave time must be paid at the employee's regular rate of pay. Employers cannot require employees to use existing paid sick time or other paid time off before using this new Covid-19 vaccine leave.

This new paid leave for Covid-19 vaccines applies *only* to an employee's own vaccination and *not* to any time spent to assist a family member in obtaining the vaccine. Employers may require employees to provide proof of vaccination in order to receive the leave, but employers should consider confidentiality requirements applicable to collecting employees' medical information. The law also does not prevent employers from requiring employees to provide notice prior to taking the leave.

The law prohibits an employer from discriminating or retaliating against any employee who exercises their rights under this law, including requesting or obtaining time off to receive a Covid-19 vaccine. Although there is no express private right of action contained in the law, New York State has published guidance directing employees who believe their employer has violated the law to file a complaint with the New York Department of Labor.

Employers should seek legal counsel to ensure continuing compliance with employment laws. Benesch is monitoring whether more states and cities will enact similar laws providing Covid-19 vaccine protections to workers. For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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Benesch stands ready to assist with any questions as we closely follow COVID-19 developments and support client's response efforts.

Please note that this information is current as of the date of this client bulletin, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.

