CLIENT ALERTS & INSIGHTS

East Coast Employee Leave Snapshot: New Leave Laws in New York, New Jersey, and the City of Philadelphia

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States and municipalities continue to take action to fill in the gaps left by federal legislation providing leave, including for reasons related to the ongoing COVID-19 pandemic. New York, New Jersey, and the City of Philadelphia have taken such action in recent months by expanding the availability and use of sick leave under state law as well as related employee protections.

New York Paid Sick Leave Law

Starting in 2021, employees in the State of New York may take paid sick leave under New York's new paid sick leave law. The new law enacted by New York state will allow employees working in New York to: (i) begin accruing paid sick leave as of September 30, 2020; and (ii) start taking paid sick leave on January 1, 2021. New York's paid sick leave law applies to all private employers, and the cap on accrual varies based on the employer's size and net income.

The paid sick leave law requires employees to accrue sick leave at a rate of at least one hour for every 30 hours worked, beginning on the later of (i) the commencement of employment, or (ii) September 30, 2020. The cap on accrual of sick leave, as tied to employer size and/or net income, is as follows:

- Employers with four or fewer employees and a net income of $1 million or less in the previous tax year: Employees may accrue up to 40 hours of unpaid sick leave each calendar year.
- Employers with four or fewer employees and a net income greater than $1 million in the previous tax year: Employees may accrue up to 40 hours of paid sick leave each calendar year.
- Employers with between five and 99 employees: Employees may accrue up to 40 hours of paid sick leave each calendar year.
- Employers with 100 or more employees: Employees may accrue up to 56 hours of paid sick leave each calendar year.

Alternatively, employers may frontload sick leave by providing employees with 40 hours (or 56 hours, if applicable) of sick leave at the beginning of the calendar year (or any other 12-month period). Employers cannot, however, retroactively reduce the frontloaded benefit if it becomes apparent an employee did not work enough hours to accrue the full frontloaded amount. For the purpose of determining the number of employees, the state's FAQs imply that only employees working within the State of New York should be counted, although, there is not any definitive guidance on that

question in the law or the applicable regulations. Employers should exercise caution in determining how to count their workforce.

With respect to carryover under the new law, sick leave must be carried over from one year to the next, but an employer may limit sick leave use in a given year. Employers with fewer than 100 employees may limit the use of sick leave to 40 hours per calendar year, and employers with 100 or more employees may limit the use of sick leave to 56 hours per calendar year. Under the paid sick leave law, employers are not required to pay employees for unused sick leave at the end of the employment relationship.

With respect to the use of sick leave, employees may use accrued paid sick leave for the employee's own or a family member's:

- mental or physical illness, injury or health condition, regardless of whether the illness, injury, or health condition has been diagnosed or requires medical care at the time of the leave request;
- diagnosis, care, or treatment of a mental or physical illness, injury or health condition;
- assistance or attendance to related matters after an experience with domestic violence, a sexual offense, stalking, or human trafficking, such as counseling, legal proceedings, or relocation, or taking "any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee."

An employee may request sick leave either orally or in writing. The New York paid sick leave law *does not* expressly require that an employee provide reasonable notice for the need for leave or that notice be provided as soon as practicable. But proposed regulations, if passed, may allow employers to request documentation from an employee's health care provider supporting the employee's need to take sick leave if the employee has taken leave for more than three consecutive previously scheduled workdays or shifts. The paid sick leave law also does not contain a specific notice requirement for employers. Upon an employee's request, the employer must provide the employee with a summary of sick leave accrued and used by the employee for the current and/or prior calendar year. Employers must respond to such a request within three business days of the date of the request.

New Jersey Issues Regulations for the COVID-19 Job Protection Act

In September 2020, New Jersey's Department of Labor and Workforce Development issued final regulations related to the COVID-19 Job Protection Act. New Jersey's COVID-19 Job Protection Act prohibits employers from taking adverse action against employees who take time off based on the recommendation of a medical professional due to a risk that they may infect others at the workplace. The regulations define "medical professional" broadly, including, among others, registered nurses licensed by the State of New Jersey. The regulations also require employers to reinstate employees returning from protected leave to the same position with no reduction in seniority, status, benefits, pay, or other conditions of employment. If the employer has filled the position of an employee who took protected leave, the employee must be reinstated in an equivalent position. The COVID-19 Job Protection Act is tied to New Jersey's Executive Order 103, and the law's effectiveness will likely conclude upon the expiration of the Order.

City of Philadelphia's Public Health Emergency Leave

Philadelphia's mayor signed the Public Health Emergency Leave bill, which contained amendments to the city's paid sick leave law. Such amendments are set to continue through December 31, 2020, but the city might extend such amendments due to the ongoing COVID-19 pandemic.

The bill requires all hiring entities to provide employees in Philadelphia with public health emergency leave of the greater of 80 hours or the average amount of hours an employee worked over a 14-day period up to a maximum amount of 112 hours. Philadelphia employees may take this public health emergency leave for the following reasons: (i) they are subject to a federal, state, or local quarantine or isolation order; (ii) they are advised by a health care provider to self-quarantine; (iii) they are experiencing symptoms related to a public health emergency and seeking a medical diagnosis; (iv) they are caring for an individual subject to a quarantine or isolation order or advised to self-quarantine by a health care provider; (v) they are caring for a child because their school or place of care has been closed or is unavailable; or (vi) they are experiencing any other substantially similar condition specified by the United States Secretary of Health and Human Services.

Employers should seek legal counsel to ensure compliance with current federal, state, and local employment laws. For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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