

N.J.: Domestic Violence Victim Leave Law Enacted

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On July 17, 2013, Gov. Chris Christie signed into law S2177, the New Jersey Security and Financial Empowerment Act, which provides new leave rights to victims of domestic violence and sexual assault, and creates additional notice obligations for New Jersey employers. The act applies to public and private employers with 25 or more employees. The act becomes effective Oct. 1, 2013.

Under the act, an eligible employee (defined as one who has been employed for at least 12 months and at least 1,000 base hours during the 12-month period immediately preceding the leave) 1) who is a victim of an incident of domestic violence or a sexually violent offense, or 2) whose child, parent, spouse, domestic partner or civil union partner (hereinafter, "relative") is such a victim, is entitled to 20 days of unpaid leave in the 12-month period following the incident of domestic violence or sexual assault. An employee is entitled to 20 days of leave for any subsequent incident of domestic violence or sexual assault within 12 months of that incident; however, the Act appears to limit an employee to no more than 20 days of leave over any 12-month period. The leave may be taken intermittently in intervals of no less than a day, for the following reasons:

*Seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's relative.

*Obtaining services from a victim services organization for the employee or the employee's relative.

*Obtaining psychological or other counseling for the employee or the employee's relative.

*Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's relative from future domestic or sexual violence or to ensure economic security.

*Seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's relative, including preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence.

*Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the employee or the employee's relative was a victim.

An eligible employee may elect to use, or an employer may require the employee to use, his or her accrued paid vacation leave, personal leave, or medical or sick leave while taking leave under the act. In such cases, the employee's paid leave will run

concurrently with the unpaid leave provided by the act. Similarly, if an employee requests leave for a reason covered by both the act and the New Jersey Family Leave Act or the federal Family and Medical Leave Act, the leave will count simultaneously against the employee's entitlement under each respective law.

Employees seeking leave under the act must provide their employers with advance written notice when such leave is foreseeable, as far in advance as is reasonably practical under the circumstances. Employers may require documentation from employees to substantiate the need for leave, and the act provides a list of the types of documentation that would be deemed "sufficient" (e.g., a domestic violence restraining order, a letter from the prosecutor, etc.). The employer must keep any such documentation strictly confidential, unless disclosure is voluntarily authorized by the employee or required by a federal or state law, rule, or regulation.

Employers must also conspicuously display a notice of employees' rights and obligations under the act, in a form to be provided by the Department of Labor and Workforce Development, and to use "other appropriate means to keep its employees informed." It is not yet clear what employers must do to comply with this "other appropriate means" provision, with potential options ranging from advising an employee of his or her rights upon notice that the employee or his or her relative was a victim, to including a summary of the new leave rights on the company intranet or in the employee handbook. It also is unclear when the formal notice will be made available. (We will issue an updated alert when the notice is promulgated.)

Finally, employers are prohibited from discriminating or retaliating against employees for exercising their rights under the act. Aggrieved employees can bring (within one year of the alleged violation) a private cause of action in Superior Court and can recover the full range of damages and attorneys' fees. A court may also order civil fines of no less than \$1,000 and no more than \$2,000 for a first violation, and up to \$5,000 for subsequent violations. The law does not specify the state entity or agency to which such fines would be paid.