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New Jersey Law Requires Covered Employers to Provide Domestic Violence Leave

By Eboneé Hamilton Lewis and Lauren Marcus

Update: The poster containing employee rights under the NJ SAFE Act is now available on the NJ DOL's website. The form poster must be conspicuously posted by October 1. You can access the poster by clicking [here](#).

On July 17, 2013, Governor Chris Christie signed into law the New Jersey Security and Financial Empowerment Act (NJ SAFE Act). New Jersey joins 15 states, the District of Columbia,¹ and a handful of local governments in providing victims of domestic violence or sexual assault with the right to take unpaid leave. Effective October 1, 2013, the NJ SAFE Act will provide eligible employees with unpaid time off to attend to a variety of matters related to an act of domestic violence or sexual assault committed against the employee or a family or household member.

The NJ SAFE Act grants employees the right to sue their employers for violations of the law if leave is denied or if the employee is the victim of wrongful discrimination or retaliation for requesting leave under the law. Under the new law, New Jersey employers will likely face new legal challenges and increased administrative costs, similar to those associated with carrying out the provisions of the New Jersey Family Leave Act (NJFLA). While the NJ SAFE Act identifies activities for which leave may be taken, the statute provides obstacles to implementation and employers will have to carefully tread new territory to avoid allegations of unfair implementation, while also preventing misuse of the leave period.

Covered Employers and Employees

Unlike the federal Family and Medical Leave Act (FMLA) and the NJFLA, which generally applies to employers with 50 or more employees, the NJ SAFE Act applies to employers with 25 or more employees. Additionally, the NJ SAFE Act applies to all public offices, agencies, boards and government bodies in the State.

To be eligible for protection under the NJ SAFE Act, an individual must be employed for at least 12 months (there is no requirement that they be consecutive) and for at least 1,000 base hours (approximately 20 weeks) during the immediately preceding 12-month period. A covered employee who is a victim of domestic violence or a sexually violent offense (a "qualifying incident"), or

¹ Arizona, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Kansas, Maine, New Jersey (effective October 1, 2013), New Mexico, North Carolina, Oregon, Virginia, and Washington provide leaves for victims of domestic violence or sexual violence.

whose family member (defined as a child, parent, spouse, domestic partner, or civil union partner) is a victim, is entitled to unpaid leave of no more than 20 days in one 12-month period, to be used in the 12-month period following any qualifying incident. The unpaid leave may be taken intermittently in intervals of at least one day, within the 12-month period following the qualifying incident. Each qualifying incident is a separate offense for which an employee is entitled to unpaid leave, provided he or she has not exhausted the allotted 20 days for the 12-month period.

The new law makes it unlawful for an employer to threaten or discharge, harass or otherwise discriminate or retaliate against an employee because the employee took or requested NJ SAFE Act leave.

Qualifying Reasons for Leave

Employees may take leave to engage in any of the following activities (as it applies to them personally, or to a family member as defined above):

- Seeking medical attention for, or recovering from, physical or psychological injuries caused by the incident;
- Obtaining services from a victim services organization;
- Obtaining psychological or other counseling;
- Participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the victim's safety or to ensure his or her economic security;
- Seeking legal assistance, including preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic or sexual violence; or
- Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

An employer may require employees to provide documentation of the qualifying incident when requesting leave. Acceptable supporting documents include the following:

- A domestic violence restraining order or other documentation issued by a court;
- Written documentation from a county or municipal prosecutor;
- Documentation of the conviction of the person who committed the qualifying incident;
- Medical documentation of the qualifying incident;
- Certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency or Rape Crisis Center; or
- Other documentation or certification provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or family member in dealing with the qualifying incident.

If the need for leave is foreseeable, employees must provide employers with written notice as far in advance as is reasonable and practical under the circumstances.

Employers may also require that employees use any accrued paid vacation leave, personal leave, or medical or sick leave during any part of the 20-day period of unpaid leave. If an employee requests leave for a reason that is also covered by the FMLA or the NJFLA, employers may count the leave against an FMLA or NJFLA entitlement and run it concurrently with the employee's entitlement under each respective law.

Posting Requirements

An employer must conspicuously post a notice advising employees of their rights and obligations under the NJ SAFE Act. The New Jersey Department of Labor will approve a required form for posting.

Remedies

The sole remedy for a violation of the NJ SAFE Act is a private cause of action in civil court. An employee who prevails in any such cause of action will be eligible to receive all remedies available in common law tort actions, such as emotional distress and compensatory damages. A court may also order a fine, an injunction, and/or reinstatement of an employee to the position held prior to the unlawful discharge or retaliatory action. Further, as with New Jersey's other anti-discrimination statutes, a prevailing employee will be entitled to payment of reasonable costs and attorneys' fees incurred by bringing an action.

Recommendations

There are several steps employers should take to ensure compliance with the NJ SAFE ACT, as well as guard against possible misuse of the law, protect themselves against excessive administrative costs, and minimize the risk of litigation brought by protected employees. Our recommendations are:

- Evaluate and update all policies regarding leaves of absence to ensure compliance with the new law;
- Establish a lawful administrative process for evaluating, granting and denying leave requests;
- Ensure the confidentiality of all information related to leave requests;
- Train human resources personnel on the requirements under the NJ SAFE Act;
- Monitor, evaluate and ensure consistent application of leave policies to protect against claims of discrimination based on other protected characteristics;
- Educate management on the statutory requirements and direct them to the proper personnel if leave is requested; and
- Inform all employees of their new rights and the changes in existing policies.

The New Jersey Department of Labor will issue a posting that covered employers must display in their workplaces. Additionally, it will publish interpretive regulations regarding the proper implementation of the new law. In the few months before the law goes into effect, and until the Department of Labor implements its regulations, employers should consult with counsel to ensure that all policies are up to date and disseminated to all employees and personnel, and to otherwise ensure compliance with these new statutory obligations.

Unlike California and New York, the NJ SAFE Act did not amend the New Jersey Law Against Discrimination (NJLAD) to include victims of domestic violence or sexual assault as a protected class. Regardless, employers should continue to be mindful of how state and federal law may apply to employment situations involving employees who are the victims of domestic violence or sexual assault. Indeed, both NJLAD and Title VII of the Civil Rights Act already prohibit discrimination on the basis of sex and disability, including prohibiting an employer's use of stereotypes rooted in these protected classes. Consequently, employers should not overlook how state and federal anti-discrimination laws may apply to employment situations involving employees who now have leave rights under the NJ SAFE Act. In a Q&A fact sheet, the Equal Employment Opportunity Commission (EEOC) identifies some examples that illustrate how Title VII and the Americans with Disabilities Act, for example, may protect employees who are the victims of domestic violence or sexual assault, and under what circumstances employment decisions may infringe on those rights.² Employers should ensure that individuals responsible for administering leave requests are not only aware of the new statutory leave requirements, but also understand the potential that other equal employment opportunity laws may be implicated.

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² EEOC, Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic Violence or Dating Violence, Sexual Assault, or Stalking, http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.