



# New Law Requires New Jersey Employers To Provide Unpaid Leave to Domestic Violence Victims

Client Advisories

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A new law passed in New Jersey offers expanded employment protections for domestic violence victims and their families. Effective October 1, 2013, the New Jersey Security and Financial Empowerment Act ("SAFE Act") requires employers to provide employees with up to 20 days of unpaid leave within a year following an incident of domestic violence or sexual assault. The passage of this law puts New Jersey in a small but growing group of states and cities across the country, including Philadelphia, that have enacted similar protections. A quick guideline to ensure compliance for affected employers is set forth below.

## **Who is covered?**

Public and private employers with 25 or more employees.

## **Who is eligible?**

Employees who have worked for their current employer for at least 12 months total and at least 1,000 hours in the preceding 12-month period.

## **When must leave be granted?**

Covered employers must grant eligible employees who are victims and/or whose family or household members are victims of domestic violence or a sexually violent offense up to 20 days of unpaid leave within a year of an incident for one of the following reasons:

1. To seek medical attention or to recover from physical or psychological injuries resulting from domestic or sexual violence;
2. To obtain services from a victim services organization;
3. To obtain counseling;

4. To participate in safety planning, relocating, or other actions to increase the safety of the victim from future incidents or to ensure economic security;
5. To seek legal assistance or remedies to ensure the health and safety of the victim, including preparing for or participating in any civil or criminal proceedings related to domestic or sexual violence; or
6. To attend, participate in, or prepare for a criminal or civil court proceeding related to an incident of domestic or sexual violence of which the employee or family or household member was a victim.

The leave may be taken intermittently at the employee's option.

#### **May employers require proof of the need for leave?**

Yes, employers are permitted to require documentation supporting the need for leave. Sufficient documentation includes the following:

1. A domestic violence restraining order or other documentation of court-issued equitable relief;
2. A letter from a prosecutor's office;
3. Documentation of the conviction of the abuser;
4. Medical documentation of the domestic or sexual violence;
5. A certification from a domestic violence specialist or rape crisis center; or
6. Documentation from a religious or social services professional who has assisted the victim.

The Act requires that all information provided to employers regarding a leave taken pursuant to the Act and any failure of an employee to return to work be kept strictly confidential, unless the disclosure is voluntarily authorized in writing by the employee or is otherwise required by law.

#### **Do employees have to give notice of the need for leave?**

The Act requires employees seeking leave under the Act to provide written notice of the need for leave as far in advance as is reasonable and practical under the circumstances.

#### **What other obligations are imposed on employers?**

Similar to other employment laws and regulations, the Safe Act contains both anti-retaliation and notice provisions. With respect to the former, employers are forbidden from discriminating or retaliating against employees who exercise their rights under the Act.

With respect to the notice requirements, employers are required to display a notice of employees' rights and obligations under the Act. A form notice will be published by the Department of Labor and Workforce Development but is not yet available. The Act also instructs employers to utilize "other appropriate means" to keep employees informed of their rights, although it provides no examples to guide employers as to what this



requires. Given this ambiguity, the cautious approach would be to include information regarding the protections available to employees under the Safe Act in employee handbooks.

### **What are the consequences of non-compliance?**

The Act creates a private cause of action for current and former employees and provides that all remedies available in common law tort shall be available to prevailing plaintiffs. In addition, the Act provides that a court may order: (1) assessments of civil fines ranging from \$1,000 to \$5,000 per offense; (2) injunctive relief to restrain continued violations; (3) reinstatement of the employee to his/her prior position and reinstatement of full fringe benefits and seniority rights; (4) compensation for back pay and lost benefits; and (5) payment of reasonable costs and attorney's fees.

### **What else should employers know about the Act?**

The Act specifically permits employers to require employees to exhaust accrued paid leave (vacation, personal, sick or medical) provided by the employer or unpaid federal (Family and Medical Leave Act) or state (New Jersey Family Leave Act) leave time before using leave pursuant to the Act.

If you have any questions regarding the Safe Act or other labor & employment matters, please contact a member of Archer's **Labor and Employment Department** at any of our offices listed below.

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