

New Jersey Employment Law Update

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Under Governor Phil Murphy's new administration in 2018, several notable laws have been passed that affect nearly all employers and employees in New Jersey. Employers should be cognizant of the below developments, and other new changes that may take place under a new administration that has made employee rights a key focus.

Equal Pay Legislation

On April 24, 2018, Governor Murphy signed into law what may be the strongest equal pay legislation in the United States. The "Diane B. Allen Equal Pay Act" is to be effective on July 1, 2018.

Who Does this Apply to?

All private and public New Jersey employers must comply with the Equal Pay Act.

What Does the Law Require?

The "Diane B. Allen Equal Pay Act" makes it illegal for employers to offer lower pay or benefits to members of protected classes (including women and minorities) in the workplace compared to other employees performing "substantially similar work."

In the event that lower pay or benefits are offered to individuals who belong to a protected class under the law, the Act requires that employers demonstrate how other non-discriminatory factors including experience, training, productivity, or education, provide a legitimate reason for such differences. Additionally, employers must not only demonstrate a legitimate non-discriminatory reason for such

pay differential, but must also show that the reasons cited are not creating a disparate impact on employees that belong to a protected class.

The law further amends the New Jersey Law Against Discrimination to allow an employee to seek six years of back-pay for equal pay violations, and allows employees to seek treble damages against any employer that violates the above standards.

Moreover, employers are barred from retaliating against an employee for seeking legal advice, discussing with any government agency, or discussing among employees or former employees any issues related to compensation or pay practices.

Employers must be aware of these new standards when making decisions related to hiring, promotion, and compensation, as violations are subject to the strong penalties above including the possibility of trebled damages.

Sick Leave Legislation

The New Jersey State Legislature on April 12, 2018, also passed the New Jersey Paid Sick Leave Act, which Gov. Murphy signed into law on May 2, 2018. The law will take effect 180 days after it is signed, on October 29, 2018.

Who Does this Apply to?

The Act is particularly significant because of the breadth of its applicability to employers and employees in New Jersey.

As to employers, the Act requires that generally all private and public employers comply with these new rules, with exceptions to per diem healthcare workers, certain employees covered by collective bargaining agreements, and certain public employees already provided with sick leave through other law or regulation. The Act applies its terms equally to all employers, even small businesses.

As to employees, the Act is also particularly expansive because a minimum amount of hours worked is not required for an employee to be eligible for paid sick leave, so long as the employer is required to comply.

What Does the Law Require?

Employers are required to provide up to 40 hours of paid sick leave to employees during an employer-established benefit year. Up to 40 hours of paid sick leave are to accrue at a rate of 1 benefit hour for every 30 hours worked by the employee.

As an alternative, a business may provide 40 hours of front loaded paid sick time, or provide an alternative leave policy that provides equal or greater benefits than the statutory minimums, so long as the policy also allows these benefits to accrue at an equal or greater rate to the statutory minimums.

Employees can be eligible to use sick leave for a broad range of reasons including:

1. Diagnosis, treatment, care, or recovery from the employee's own mental or physical illness, injury, or other condition, including preventative care;
2. To aid or care for a family member during diagnosis, care, treatment, recovery from a mental or physical illness, injury, or other condition, including preventative care;
3. Circumstances relating to domestic or sexual violence concerning an employee or the employee's family member;
4. Circumstances relating to closure of the employee's workplace, or the school or childcare used by the employee, by order of a public official due to a public health emergency;
5. Time needed by the employee in connection with attending a school-related conference, meeting, function or other event requested or required by the school, or to attend a meeting regarding care provided to the child in connection with the child's health conditions or disability.

Up to 40 hours of unused time can be carried forward to the next year for employers with less than 10 employees, and up to 72 hours if the employer has 10 or more employees.

Employers should implement sick leave policies to reflect the new rules, including necessary procedures for recording accrual and use of sick time. If policies already are in place, employers should review their existing leave policies in order to determine if changes need to be made to meet the minimum requirements of the new rules. In particular, many policies will need to be amended to

include provisions allowing for use of sick leave for school related reasons, and domestic violence related reasons, which were not commonly included provisions in many sick leave policies.