

Final Regulations Now In Place Protecting NJ COVID-19 Related Leave

October 1, 2020

New Jersey employers are reminded that certain COVID-19-related leaves of absence are protected if employees are out of work for a qualifying reason. Pursuant to a law signed by Governor Murphy in March, regulations for which went into effect last month, employers are prohibited from terminating, refusing to reinstate, or retaliating against an employee who requests or takes time off from work during the current pandemic. The request must be based on a recommendation from a medical professional licensed in New Jersey stating that the employee should take time off from work because the employee has, or is likely to have, an infectious disease.

The regulations define terms such as “medical professional licensed in New Jersey” which “means a physician, physician assistant, advanced practice nurse, or registered nurse who is appropriately licensed by the State of New Jersey.”

The regulations reiterate that upon expiration of a protected leave, an employee must be restored to the position held immediately prior to the commencement of the protected leave, with no reduction in seniority, status, employment benefits, pay, or other terms and conditions of employment. Additionally, if that position has been filled, the employer must reinstate the employee to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment. Thus, even small employers who are not covered by laws such as the Family and Medical Leave Act (“FMLA”), will now be required to extend protections similar to those of the FMLA, to employees who must take a leave because they have or may have covid-19.

These employee protections do not apply if the employer experiences a reduction in force or layoff and the employee would have lost his or her position regardless of the leave. If that occurs, the employee retains all rights under any applicable layoff and recall system, as if the employee had not taken the protected leave.

Employees who have been terminated or retaliated against in violation of this law are entitled to reinstatement. In addition, employers who violate this law may be subject to administrative penalties in the amount of \$2,500 for each violation, which will be processed in the same manner as New Jersey wage violations submitted to the Division of Wage and Hour Compliance. Employers should be aware that individuals who are misclassified as independent contractors instead of employees pursuant to the “ABC” test may also seek redress under this law.

Employers with questions about their obligations under this and similar laws should consult with counsel before taking any adverse employment actions against employees who are out of work for covid-19-related reasons.