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Just in Time for the Holidays, New Brunswick Gives the "Gift" of Paid Sick/Safe Time

BY JEANNINE IDRISIA AND LAUREN MARCUS

On December 17, 2015, New Brunswick, New Jersey passed a sick and safe leave ordinance that provides up to 40 hours of paid sick and safe leave to employees beginning on January 6, 2016. Although there are similarities between this ordinance and other sick leave ordinances in New Jersey, there are substantive differences as well. Consequently, employers that previously updated their time-off policies to comply with other sick leave ordinances in New Jersey will need to revisit those policies to ensure compliance.

Coverage and Accrual

The new ordinance applies to businesses with locations in the City of New Brunswick with five or more "full-time equivalent" employees. Unlike other ordinances in New Jersey, New Brunswick's paid sick/safe leave law expressly states that only employers with locations in New Brunswick (and not merely employees who may work in the City) are covered.

For employers with 10 or more employees anywhere, full-time employees will accrue one hour of paid sick/safe time for every 35 hours worked within the City, up to a maximum of 40 hours per year. Part-time employees will accrue at the same rate, up to 24 hours of paid sick/safe time per year. Employers with fewer than 10 employees may limit accruals of both full-time and part-time employees to 24 hours of paid sick/safe time per year. For employers that were just getting comfortable with the one-hour-for-every-30-hours-worked accrual rates found in the paid sick leave ordinances of other New Jersey municipalities, New Brunswick's accrual rate will make it more challenging to have a one-size-fits-all policy.

Moreover, the ordinance's full-time equivalent dichotomy is likely to cause confusion. The ordinance defines the term "full-time equivalent" as the number of hours worked by full-time and part-time employees for compensation that add up to one full-time employee. Full-time employees are those averaging 35 hours or more per week during the current calendar year, or from their date of hire if working less than a year. Part-time employees are those averaging 20 or more hours per week, but less than 35 hours.

Because the ordinance covers only employers with five or more "full-time equivalents," small employers will need to understand how to use these definitions to determine the number of full-time equivalents they employ.

Paid sick/safe time in New Brunswick is compensable at the same hourly rate and with the same benefits as those the employee would normally earn during hours worked. However, the ordinance clarifies that employees are not entitled to compensation for lost tips or commissions, and payment is required only for hours that an employee was actually scheduled to work.

Unless accrued but unused paid sick/safe time is paid out at the end of the year, paid sick/safe time must be carried over to the following calendar year, up to the employee's maximum annual paid sick/safe time accrual, but no more than 40 hours of paid sick/safe time may be used in any calendar year. Employers are not required to pay employees for accrued but unused sick/safe time at the termination of employment.

Individuals who work from home, independent contractors, certain members of construction unions, and per diem and temporary hospital employees are not subject to the ordinance and therefore do not accrue paid sick/safe time. Additionally, unionized employees can waive their right to paid sick/safe time in their collective bargaining agreements.

Use of Sick/Safe Time

Paid sick/safe time begins to accrue on the first day of employment, but may not be used until after the 120th calendar day of employment. Thereafter, paid sick/safe time may be used as it accrues. As indicated by the name, paid sick/safe time can be used not only for reasons relating to an employee or family member's illness, treatment or preventive care, or closures relating to certain public health emergencies or communicable diseases, but also for reasons relating to domestic violence, sexual assault or stalking. Time off for "safety" reasons related to domestic violence, sexual assault or stalking include time to:

1. enable an employee to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's family member;
2. enable an employee to seek treatment by a health care provider or attend treatment for a victim who is a family member;
3. enable an employee to obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program;
4. enable the employee to obtain or assist a family member in obtaining mental health counseling;
5. enable the employee to participate in safety planning, or to temporarily or permanently relocate or take other actions to increase the safety of the employee or employee's family members.

The ordinance allows employers to request written confirmation that paid sick/safe time was used for an authorized purpose when the time off lasts for more than three consecutive shifts or days, or when the employer observes a pattern of absences indicating that the employee may be fraudulently using sick/safe time. However, in the case of time off for reasons relating to domestic violence, sexual assault or stalking, an employee's written and signed statement, by itself, must be considered acceptable documentation. Additionally, when sick time is used by an employee working at an eating and/or drinking establishment on certain recognized holidays, the employer may require the employee to provide documentation that the time has been used for a purpose authorized by the ordinance. Similarly, individuals employed by certain hospital employers will not be eligible to use sick/safe time on days/shifts when the hospital has declared a state of emergency, unless the employee was already on approved sick/safe leave.

Notice and Poster Requirements

Employers are required to display a poster regarding the City's sick leave requirements in English and any other language that is the first language of at least 10% of the employer's workforce. The required notice must also be given to employees at the time of hire (or as soon as practicable for employees already employed on the effective date) in English or any other language that is the primary language spoken by the employee, so long as that language is also spoken by at least 10% of the employer's workforce. New Brunswick's Department of Planning, Community and Economic Development is charged with creating and making available the required posters and notices in English and Spanish and any other language deemed appropriate. The poster and notice is already available on the City's website. Records concerning the accrual and use of paid sick/safe time must be kept for three years.

Enforcement

Employees who believe they have been denied rights under the City's ordinance may file a complaint with the Department of Planning, Community and Economic Development within 180 days of the alleged violation. Filing a complaint with the Department is a prerequisite to filing a complaint in municipal court. Employers found guilty of violating the ordinance are subject to fines and may be required to pay restitution in the amount of any paid sick/safe time unlawfully withheld.