Connecticut Governor Dannel P. Malloy has pledged to sign the Connecticut Paid Sick Leave legislation, which passed in the legislature on June 3, 2011. Upon its January 1, 2012, effective date, Connecticut will become the first state in the country to mandate paid sick leave. Although the legislation (Public Act 11-52) provides a safe harbor for covered employers that already offer other types of paid leave, such employers nonetheless may need to modify their policies and practices to ensure compliance with the legislation. The extent of such modifications, however, is uncertain as we await guidance or regulations interpreting certain aspects of P.A. 11-52.

Key Provisions
The paid sick leave legislation applies to public and private employers (other than manufacturers and certain nationally-chartered non-profits) with 50 employees or more in the state. The act has two key components:

1. a mandate to provide service workers with up to 40 hours of paid sick leave per calendar year for absences due to the illness, injury, health condition, treatment or preventive medical care of the service worker, her child or spouse or for the service worker’s absence due to family violence or sexual assault; and
2. a prohibition on retaliating against employees who request or use paid sick leave.

The mandate to provide up to 40 hours of paid sick leave applies only to “service workers,” defined as hourly and salaried employees not exempt from the federal Fair Labor Standards Act, who are primarily engaged in an occupation falling within a lengthy list of positions identified in the legislation, ranging from “Miscellaneous Office and Administrative Support Workers” to “Waiters and Waitresses” to “Home Health Aides.”

“Service workers” excludes “per diem” workers and “temporary workers”; however, the latter term is defined narrowly and may not apply to all workers classified by their employers as “temporary.” Part-time service workers of a covered employer are eligible to accrue and use paid sick time if they have worked an average of at least 10 hours per week during the preceding calendar quarter.

Safe Harbor
Under the safe harbor provision of P.A. 11-52, covered employers who employ service workers are deemed to be in compliance with the paid sick leave mandate if they offer other forms of paid leave, such as paid vacation time, personal time or paid time off (“PTO”) to service workers that: (1) accrues at a rate that is at least as generous as the mandated paid sick leave; and (2) that “may be used” for the same purposes as leave under P.A. 11-52. Thus, it appears that the 40 hours mandated under the paid sick leave legislation need not be made available solely for reasons of illness, injury, medical treatment, and the like, so long as the service worker is permitted to take it for those purposes.

Nevertheless, at least during that initial 40 hours of PTO, a covered employer may have to remove from its policies any conditions not expressly permitted under the paid sick leave legislation, such as requirements that PTO be used in minimum increments, that medical documentation to substantiate the absence be provided (unless the absence is for three or more consecutive days), that a worker give more notice of an absence than is required under P.A. 11-52, or a prohibition on carrying over unused PTO to the following calendar year.
A covered employer with an existing PTO offering also must note P.A. 11-52’s notice requirements and compensate the service worker for a covered absence at her “normal hourly wage.”

The legislation does not appear to prevent an employer from imposing additional conditions on PTO after the initial 40 hours of paid time are exhausted, no matter the reason.

Retaliation

Even a covered employer with a non-statutory paid leave policy must consider the anti-retaliation provisions contained in P.A. 11-52, which protect an “employee” from “retaliatory personnel action” (including disciplinary action) for requesting or using paid sick leave either (1) in accordance with the law or (2) “in accordance with the employer’s own paid sick leave policy.”

As used here, “employee” is not limited to service workers or non-exempt employees — the absence of such a qualification in the statute appears to have been purposeful. The full impact of the anti-retaliation provisions will undoubtedly require further guidance from the state Labor Commissioner as they may not apply to all employees (as was initially feared), but only to employees of a covered employer with a bona fide paid sick leave policy (as opposed to a neutral PTO policy).

It seems clear that, at a minimum, service workers will be protected from retaliation during at least the first 40 hours of PTO if it is requested or used for one of the specified reasons. Thus, a covered employer with a neutral PTO policy may need to suspend application of a no-fault attendance policy for the first 40 hours of available time. It may also need to consider whether, as under the federal Family and Medical Leave Act, it should begin requiring that service workers designate absences as “sick time” so it is clear what paid time off is and is not entitled to protection under P.A. 11-52’s anti-retaliation provisions. Covered employers may find their hands tied when trying to reign in abusers of PTO during the first 40 hour period (such as when a service worker continually arrives late or leaves early claiming illness, injury or another covered purpose).

Consequences of a Violation

Although the statute lacks a direct court remedy for individuals, an aggrieved employee can file a complaint with the Labor Commissioner, who will have the authority to impose civil penalties ranging from $100 to $500, depending on the nature of the violation, and to award all appropriate relief to the employee, including reinstatement, back wages, benefits and the value of sick time.

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A covered employer that employs service workers must take certain steps to comply with Connecticut’s paid sick leave legislation, even if the employer falls within the safe harbor provision by virtue of an existing PTO, vacation or personal leave policy. The Labor Commissioner is expected to issue guidelines by the end of summer that may shed light on some of the open questions. In the meantime, employers should begin reviewing their existing paid time off policies and practices to identify areas of possible concern or conflict with the new law.

Jackson Lewis attorneys are available to assist employers with the new paid sick leave legislation and other workplace requirements. We will, of course, continue to provide timely updates as additional guidance becomes available.

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