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Employer Obligations to Employees Who are Victims of Domestic Violence

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October has been designated National Domestic Violence Awareness Month (NDVAM) since 1989. While a growing number of states and municipalities have enacted laws requiring some form of reasonable accommodation, including time off, for employees who are victims of domestic violence, no federal law directly addresses employer obligations to such employees. The Equal Employment Opportunity Commission has issued guidance reminding employers that their obligations under Title VII of the Civil Rights Act and the Americans with Disabilities Act may necessitate certain accommodations to affected employees. This article is a brief overview of existing state and municipal laws as well as proposed federal legislation and other federal initiatives to protect employees who experience domestic violence.

A number of jurisdictions, including Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maine, New Jersey, New Mexico, North Carolina, Oregon, Virginia, Washington, and the District of Columbia require private-sector employers to provide leave or other benefits to victims of domestic violence. (See our articles, Amendmemts to Oregon's Domestic Violence Leave Law Extend Coverage to Part-Timers, New Employees and New Jersey Employers Must Provide Unpaid Leave to Victims of Domestic Violence under New Law, for more examples.) Cities such as Philadelphia, Portland and Seattle have similar requirements. While the amount of time off, reasons for leave, notice and other requirements vary under these laws, all enactments generally require job-protected leave for medical attention and psychological counseling, obtaining social services, relocating, seeking legal assistance and participating in legal proceedings. Discriminating or retaliating against an employee who requests or takes leave for reasons related to domestic violence may be prohibited under these laws. In addition, some jurisdictions, such as Connecticut, Washington, D.C., Jersey City, NJ, New York City, NY, Philadelphia, PA, Portland, OR, San Francisco, CA, and Seattle, WA, require covered employers to provide paid leave. (See our article, Seattle's New Paid Leave Law, for example.) Moreover, the New York State Human Rights Law (NYSHRL) makes victims of domestic violence a protected class and employers are prohibited from discriminating or retaliating against them based on their status as victims of domestic violence, sexual abuse or stalking.

At the federal level, the proposed Healthy Families Act (S. 631/H.R. 1286) would require employers with at least 15 employees to provide up to 56 hours of paid sick time to employees each calendar year, among other things, for an absence resulting from domestic violence, sexual assault or stalking, if the time is to:

- seek medical attention for the employee or covered persons;
- recover from physical or psychological injury or disability caused by domestic violence, sexual assault or stalking;
- obtain or assist in obtaining services from a victim services organization or psychological or other counseling;
- seek relocation; or
- take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic violence, sexual assault or stalking.

Under the Healthy Families Act, employees would earn not less than one hour of paid sick time for every 30 hours worked, up to a maximum benefit of 56 hours of paid sick time per calendar year. Under the Act, employers may allow employees to borrow unearned paid sick time. Another bill, H.R. 1229, would amend the Violence Against Women Act to provide for emergency leave to address domestic
violence, dating violence, sexual assault or stalking.

The EEOC has issued domestic violence guidance in the form of Qs & As addressing the applicability of Title VII and the ADA to job applicants and employees who experience domestic or dating violence, sexual assault or stalking. (See our article, EEOC Issues Domestic Violence Guidance, Reminds Employers to Consider Title VII and ADA.) While the October 12, 2012, guidance did not change fair employment practice law, it is a reminder that Title VII prohibits disparate treatment based on sex, including sex-based stereotypes, as well as sexual or sex-based harassment, and that employers should consider these protections when dealing with employees who experience domestic, dating or other sexual violence.

The EEOC also explains that the ADA prohibits disparate or different treatment or harassment at work based on an actual or perceived impairment, which could result from domestic or dating violence, sexual assault or stalking. In addition, the EEOC said the ADA may require employers to provide reasonable accommodations for a disability or record of disability, including anxiety or depression stemming from a traumatic incident.

The federal and state requirements serve as a floor in setting employers obligations to provide leave and other benefits to victims of domestic violence. Employers may consider doing more as part of an effective employee-relations program to protect their vulnerable workers.

Employers should review their policies and practices regularly with employment counsel to ensure they effectively address specific organizational needs and comply with applicable law. If you have any questions or require assistance, please contact the Jackson Lewis attorney with whom you regularly work.

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