

Municipal Paid Sick Leave Ordinances

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One of the more remarkable developments in New Jersey employment law in recent years has been the emergence of city ordinances requiring employers to offer paid sick leave to employees who work in those cities. These ordinances have been passed in reaction to the failure of the Governor and State Legislature to enact a statewide paid leave statute. To date, eleven cities have adopted such laws: Bloomfield, East Orange, Elizabeth, Irvington, Jersey City, Montclair, Newark, New Brunswick, Passaic, Paterson and Trenton.

While there are differences between them, the ordinances are all substantially similar and require most employers to provide one hour of paid sick leave for every 30 to 35 hours worked, up to a maximum of 40 hours per year. Most of our clients offer at least that much paid sick leave to employees. However, it is important to know that the ordinances were designed to ensure that paid leave is available to workers at the very bottom of the wage scale. As such, employees only need to work 80 hours in a year to qualify for some paid leave, which may conflict with your policy on paid time off accrual.

Furthermore, the ordinances require employers to allow employees to “bank” up to 40 hours of paid sick leave for use in future years, which may also conflict with your policy. Please let us know if you would like us to analyze your policies to ensure compliance with the ordinances in any of the cities where you have operations.

Municipalities have very limited authority to fashion civil remedies for violations of ordinances. Thus, the paid sick leave ordinances impose quasi-criminal sanctions for violations of paid leave requirements, subjecting employers and employer representatives to fines and potentially even jail time. Cases are to be brought in municipal courts.

These new ordinances raise many issues and undoubtedly there will be court challenges to their enforceability and perhaps constitutionality. One important concern is the degree to which municipal courts, certainly not accustomed to such matters, will be asked to weigh in on

the question of whether independent contractors are in fact statutory employees entitled to paid leave. Another issue is whether employees who believe that they were discharged for complaining about the failure to provide paid sick leave will be able to use the ordinances to claim that their terminations were in violation of public policy, thereby providing them with a Superior Court wrongful discharge remedy. Perhaps most alarmingly, it is possible that cities and towns will now attempt to regulate other aspects of the employee/employer relationship, thus creating numerous new, and possibly even conflicting, standards that will have to be learned and followed.

It is expected that unless the State Legislature acts to pass a statewide paid sick leave law, other cities and perhaps smaller towns will pass such ordinances. Even if your operations are not covered by a paid sick leave ordinance today, they may be soon.

We are of course available to answer any questions you have about the paid sick leave ordinances. If you would like a copy of any of the ordinances, please let us know.

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