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CLIENT ALERT
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MASSACHUSETTS ENACTS NEW DOMESTIC VIOLENCE LEAVE LAW

Earlier this month, Governor Deval Patrick signed emergency legislation which provides extensive reforms to various laws regarding domestic violence. Although introduced without much fanfare, the new legislation will significantly impact many Massachusetts employers.

The new legislation requires that employers with 50 or more employees provide up to 15 days of leave in any 12 month period to employees in domestic violence situations. Important points regarding the new leave law include:

- The leave is available if:
 - (1) the employee or his/her “family member” is a victim of “abusive behavior”;
 - (2) the employee needs the leave to seek medical attention, counseling, victim services, or legal assistance; to secure housing; to obtain a protective order; to appear in court; to meet with the district attorney or other law enforcement official; to attend child custody proceedings; or to address other issues directly related to the abusive behavior; and
 - (3) the employee is not the perpetrator of the abusive behavior against such employee’s family member.

The law provides detailed and broad definitions of “family member” and “abusive behavior.”

- The law allows the employer to determine if the leave will be paid or unpaid. Also, an employer may require that the employee exhaust all vacation leave, personal leave, or sick leave available to the employee “prior to” using this type of leave. (However, by doing so, the employer potentially would be allowing the employee to take a longer leave, because the use of such accrued time off must be “prior to” the leave and would not run concurrently with the leave, as is the case with many other types of statutory leave.)
- Except in cases of imminent danger to the health or safety of the employee, an employee seeking leave must provide appropriate advance notice as required by the employer’s

leave policy. If there is a threat of imminent danger, no advance notice is required, but the employee must still notify the employer within three workdays after taking the leave.

- Someone other than the employee may provide notice of the leave, including the employee's counselor or social worker, a member of the clergy, a shelter worker, and the employee's legal advocate.
- An employer may require that the employee provide documentation evidencing that the employee or employee's family member has been a victim of abusive behavior and that the situation is a qualifying reason for the leave. The law provides seven examples of documentation that satisfies the above requirement.
- The law states that if an "unscheduled absence occurs," an employer shall not take any negative action against the employee if the employee, within 30 days from the unauthorized absence (or within 30 days from the last unauthorized absence in the instance of consecutive days of unauthorized absences), provides the documentation described above. Accordingly, employers may need to rescind discipline and/or not consider certain absences towards disciplinary decisions if this after-the-fact notice and documentation is provided.
- Employers must keep confidential "all information" related to the employee's leave, and disclosure is allowed in only the limited and specific circumstances listed in the law.
- The law prohibits employers from engaging in any type of retaliation or discrimination against employees for taking this leave, and from coercing or interfering with employees' rights under the law.
- The Attorney General has the power to enforce the law. More significantly, however, the law provides employees a private right of action for violations of the law, and incorporates the penalty provisions from the Massachusetts wage and hour laws. Thus, if an employee succeeds in a legal claim for violation of the law, he/she will be entitled to, among other things, treble damages and attorneys' fees.
- Covered employers must "notify" each employee of the new leave provisions and, accordingly, should update their leave policies to reflect this new type of leave.

Please contact us if you would like our assistance with updating your existing leave policy and/or handbook to incorporate this new type of leave, or training managers and supervisors regarding this new leave law and the protections it provides to employees.

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