

## LABOR &amp; EMPLOYMENT

# ALERT

## THE NEW JERSEY SECURITY AND FINANCIAL EMPOWERMENT ACT OR THE “NJ SAFE ACT”

By Christina Stoneburner & Yalda Haery

The New Jersey Security and Financial Empowerment Act (“NJ SAFE Act”) was signed by Governor Christie on July 17, 2013. The law creates new leave rights for employees who are victims of domestic violence beginning October 1, 2013.

### How Much Leave is Available?

The bill provides 20 days of protected leave for an employee who was the victim of domestic violence or sexual assault or whose family member was the victim in one 12-month period following the incident of domestic violence or sexual assault. The leave would be unpaid, and could be taken intermittently in intervals no less than one day. Each incident of domestic violence or a sexually violent offense is treated as a separate offense for which leave may be required. However, no employee may take more than 20 days leave in the 12-month period.

### Who is Eligible for Leave?

To be eligible for leave, employees must work for a covered employer, which is an employer who employs 25 or more employees for each working day during each of 20 or more calendar workweeks in the current or immediately preceding calendar year. Eligible employees also must be employed for at least 12 months by a covered employer and cannot have worked less than 1,000 hours in those preceding 12 months

### Under What Circumstances is Leave Available?

Eligible employees will be entitled to protected leave for the following reasons:

(1) seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence to the employee or the employee's child, parent, spouse, domestic partner or civil union partner;

(2) obtaining services from a victim services organization for the employee or the employee's child, parent, spouse, domestic

partner or civil union partner;

(3) obtaining psychological or other counseling for the employee or the employee's child, parent, spouse, domestic partner or civil union partner;

(4) participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety of the employee or the employee's child, parent, spouse, domestic partner or civil union partner from future domestic or sexual violence or to ensure economic security;

(5) seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's child, parent, spouse, domestic partner or civil union partner including preparing for or participating in any civil or criminal legal proceeding related to or derived from domestic or sexual violence; or

(6) attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence of which the employee or the employee's child, parent, spouse, domestic partner or civil union partner, was a victim.

### Interaction of Leave Under the NJ SAFE Act

Employees may elect or employers may require employees to use any accrued paid vacation, personal, medical or sick leave during the 20 days of leave provided by the Act.

Leave taken under the NJ SAFE Act, will, where applicable, run concurrently with leave taken under the New Jersey Family Leave Act and/or the Family and Medical Leave Act.

### What Documentation May be Required by Employers?

Employers may require the employee to produce supporting documents of the domestic violence or sexually violent offense which is the basis for the leave. If the employer requires documentation, the employee may provide:

(1) a domestic violence restraining order or other documentation of equitable relief issued by a court of competent jurisdiction;

(2) a letter or other written documentation from the county or municipal prosecutor documenting the domestic violence or sexually violent offense;

(3) documentation of the conviction of a person for the domestic violence or sexually violent offense;

(4) medical documentation of the domestic violence or sexually violent offense;

(5) a certification from a certified Domestic Violence Specialist or director of a designated domestic violence agency or Rape Crisis Center, that the employee or employee's child, parent, spouse, domestic partner, or civil union partner is a victim of domestic violence or a sexually violent offense; or

(6) other documentation or certification of the domestic violence or sexually violent offense provided by a social worker, member of the clergy, shelter worker, or other professional who has assisted the employee or the employee's child, parent, spouse, domestic partner or civil union partner in dealing with the

domestic violence or sexually violent offenses.

Posting Requirements

The bill law imposes a posting requirement on employers requiring them to display “conspicuous notice” of its employees’ rights and obligations under the statute. To date, the Commission of Labor and Workforce Development has not yet created the required poster.

Penalties for Violations of the Act

The law has an anti-retaliation provision prohibiting employers from discharging, harassing, or otherwise discriminating or retaliating against an employee with respect to compensation, terms, conditions or privileges or employment on the basis that the employee took or requested any leave protected under the Act.

Employers who violate its provisions may face fines of \$1,000 for a first violation, \$2,000 for a second violation and \$5,000. Of probably more importance to employers, the law provides for a private cause of action, which means employees can file a civil suit to be reinstated and/or recover compensatory damages, including attorneys’ fees.



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