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NEW LAW ENTITLES PHILADELPHIA EMPLOYEES TO PAID SICK LEAVE

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Beginning May 13, 2015, employers must provide paid sick leave to employees who work in Philadelphia, per the City of Brotherly Love's newly enacted Promoting Healthy Families and Workplaces Ordinance. The ordinance will undoubtedly elicit feelings of frustration rather than love because it requires employers to provide employees who work in Philadelphia with one hour of paid sick leave for every 40 hours worked. Paid sick leave is capped at a maximum of 40 hours per year.

Who Is Covered by the Ordinance?

The ordinance broadly applies to most employers with at least 10 employees who work in Philadelphia. All full-time, part-time and temporary employees who work in Philadelphia are counted for purposes of the 10 employee requirement. The ordinance also applies to "chain establishment" businesses—i.e., businesses with 15 or more branches with the same trade name (regardless of ownership) that have at least one Philadelphia employee. Under the definition of chain establishment, the majority of Philadelphia's fast food restaurants are covered, including those franchise owners who only own one restaurant.

Employees who work in Philadelphia for at least 40 hours in a year are covered by the ordinance. Covered employees are entitled to one hour of paid

sick leave for every 40 hours worked and they can accrue up to 40 hours of paid sick leave per year. The following types of workers are **excluded**:

- Independent contractors;
- Seasonal workers;
- Adjunct professors;
- Employees hired for a term of less than six months;
- Interns;
- Certain health care employees with limited work schedules;
- State and federal employees; and
- Employees covered by a bona fide collective bargaining agreement.

What Types of Paid Leave Are Covered Employees Entitled To?

The ordinance allows covered employees to use their accrued paid sick leave for three reasons:

1. For medical diagnosis, care or treatment relating to the employee's own mental or physical illness, injury or health condition;
2. For medical diagnosis, care or treatment relating to the employee's family member with a mental or physical illness, injury or health condition; or

3. For medical attention, services, counseling, relocation, legal services or other services regarding domestic abuse, sexual assault or stalking.

To use paid sick leave, covered employees are required to provide their employers with an oral or written request for leave and, whenever possible, the expected duration of the absence. For foreseeable absences, employees must give advance notice as soon as possible. An exception exists for victims of domestic violence and sexual assault. The ordinance explicitly precludes employers from collecting sensitive information.

Aside From Providing Paid Sick Leave, What Else Must Employers Do?

As an initial matter, employers should track their employees' working time in Philadelphia to determine whether they have employees who are covered by the ordinance. For some employers, that will be an easy task because, for instance, they may have Philadelphia employees who exclusively work in Philadelphia. But for other employers who have employees working across city and state lines, it may require more effort.

If an employer has covered employees, the employer must not interfere, restrain or deny any covered employee's right to use paid sick leave. The ordinance also prohibits employer discrimination and retaliation against those employees who:

1. Exercise their paid leave rights under the ordinance;
2. File a complaint regarding alleged violations of the ordinance;
3. Inform their co-workers of the rights provided by the ordinance; or
4. Cooperate with an investigation relating to a possible violation of the ordinance.

The ordinance's protections do not stop there. Employers are prohibited from considering any leave

taken under the ordinance when meting out employee discipline. For instance, if a covered employee has a history of excessive absences, the employer cannot consider paid sick leave taken under the ordinance when issuing a write-up or suspension. The ordinance also requires employers to keep and retain records of covered employees' hours worked, sick leave taken and sick leave payments. Lastly, employers are required to notify each covered employee of his/her rights under ordinance in the employee handbook or a poster of rights.

What Are the Risks of Non-Compliance?

The mayor has not created nor designated an agency to enforce the ordinance, but an agency will presumably be designated or created since an aggrieved employee is required to file a complaint with the agency before filing a lawsuit. Complaints connected with violations of the ordinance must be filed within a year of the date the employee knew or should have known of the alleged violation. The ordinance authorizes the to-be-determined agency to levy fines ranging from \$1,000 to \$2,000 per violation, obtain damages (more on that topic in the following paragraph), seek reinstatement or bring a lawsuit on behalf of aggrieved employees.

There is also the possibility of litigation. Employees may file their own lawsuit after receiving a right to sue notice from the agency or if the agency does not render a final decision within 180 days from the filing date of a complaint. These lawsuits could be single plaintiff actions or class actions. Plaintiffs who prevail in these lawsuits are entitled to recover the full amount of any unpaid sick time to which they would have been entitled under the ordinance, any lost wages and benefits, liquidated damages up to a maximum of \$2,000 and reasonable attorney's fees. The ordinance also entitles successful plaintiffs to recover actual damages suffered as the result of an employer's violation.

What Should Employers Do?

The ordinance does not go into effect until May 13, 2015. That gives employers some time to establish a compliant paid leave policy. Employers should also consider revising their employee handbooks and auditing their internal HR procedures to address, among other issues, the ordinance's requirements relating to notice, recordkeeping, non-discrimination and prohibition on retaliation. Proper training also is advisable. Employers should always consult with counsel when addressing the ordinance's gray areas (e.g., privacy concerns involving victims of domestic violence or sexual assault).

For more information about this alert, please contact Franz Español at 215.299.1937 or fespanol@foxrothschild.com or any other member of the firm's Labor & Employment Department.



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