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Westchester County Adopts Mandatory Paid Safe Leave Law

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The Westchester County Board of Legislators has adopted a stand-alone safe leave law that provides victims of domestic violence and human trafficking with paid time off for qualifying reasons. The safe leave provided for in this new law—the Safe Time Leave Law—is in addition to sick leave provided for under Westchester County’s Earned Sick Leave Law.

The law takes effect on October 30, 2019, and covers most full-time and part-time employees who work in Westchester County for more than 90 days in a calendar year.

Qualifying Uses for Taking Safe Time

Employees who are victims of domestic violence or victims of human trafficking are entitled to 40 hours of paid leave, in any calendar year or consecutive 12-month period, to be defined by the employer, in order to attend/testify in criminal and/or civil court proceedings relating to domestic violence or human trafficking and/or to move to a safe location. The 40 hours of paid leave is available to eligible employees as needed (it does not accrue) and can be utilized in full days and/or increments. The law does not provide employers the right to set minimum increments for use of safe leave.

The law does not specify at what rate an employee must be paid for the qualifying leave; however, we anticipate that this will be clarified in future guidance and before the law goes into effect.

Employer Notice Requirements

Employers are required to display a copy of the Safe Time Leave Law and a poster in English, Spanish, and any other language deemed appropriate by the County of Westchester in a conspicuous location in the workplace, where all employees can access it. At the time of hire, or within 90 days of the effective date of the law, whichever is later, employers must give employees a copy of the Safe Time Leave Law and written notice of how the law applies to them. Failure to comply with the notice and posting requirement may result in a civil fine up to \$500 for each separate offense.

Employee Notice Requirements

Employees must request safe time orally, in writing, by electronic means or by any other means acceptable to the employer. The request should include the expected duration of the absence, to the extent possible. When the use of safe time leave is foreseeable, employees should make a good faith effort to provide the employer with advance notice of their intent to take safe leave.

When possible, employees should make a reasonable effort to schedule the use of safe time leave so it does not unduly disrupt the operations of the business. Regardless of when an employee provides notice of the need for safe time leave, an employer cannot require the employee to find someone to cover his or her

shift when the absence is for a qualified purpose.

Requesting Documentation of the Qualified Purpose

If an employee is requesting safe time leave, the employer may request reasonable documentation demonstrating that the safe time leave has been used for a qualified purpose, such as a court appearance ticket or subpoena, a copy of a police report or an affidavit from an appropriate attorney or organization that provides assistance to victims. The law requires that documentation and information about an employee or family member be kept confidential and not disclosed without written permission from the employee, unless such disclosure is otherwise required by law. To ensure confidentiality, employers are required to keep all health or safety information about an employee or an employee's family member on a separate form and in a file separate from other personnel information.

Presumption of Retaliation

The law prohibits retaliation against an employee who exercises his/her rights under the law. Moreover, an employer cannot include safe time leave as an absence that may lead to or result in discipline, discharge, demotion, or suspension. The law creates a "rebuttable presumption" of retaliation if an employee is subjected to an adverse action within 90 days of the employee's filing of a complaint regarding the employer's alleged violation of the Safe Time Leave Law.

Complaints

Employees must file complaints within one (1) year after the occurrence of the alleged violation with the Westchester County's Department of Weights and Measures—Consumer Protection (Department) or in court.

The Department will investigate the complaint and attempt to facilitate a resolution. If no resolution can be reached, the Department shall issue a summons, hold a hearing, and determine whether a violation occurred. Both the Department and a court of competent jurisdiction will have the authority to impose penalties, which may include requiring the employer to pay the employee three times the wages that should have been paid pursuant to the law (or \$250, whichever is greater), \$500 for each unlawful denial of a request for safe time leave, actual damages suffered by the employee, attorneys' fees, the cost of the administrative hearing, and other monetary or equitable relief.

Employers in Westchester County should work closely with experienced employment counsel well in advance of October 30, 2019 to ensure their policies comply with the Safe Time Leave Law.

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