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New Jersey's Minimum Wage and Family Leave Changes



New Jersey Governor Phil Murphy and the New Jersey Legislature have been very busy amending existing state laws in order to improve the circumstances of New Jersey employees. In February 2019, Governor Murphy both increased the state's minimum wage and expanded family leave time and benefits.

The increase to the minimum wage law does not immediately increase the current minimum wage. Instead, the change triggers a gradual increase in the minimum wage to \$15.00 for most workers by 2024. The first incremental increase in New Jersey's minimum wage is scheduled for July of this year.

Since July of 2009, while on leave under the New Jersey Family Leave law, employees were eligible for up to 6 weeks of paid benefits or 42 days of intermittent leave in a 12 month period. While on leave, the employee received a maximum of \$650.00 per week through the family leave insurance provisions of the New Jersey Temporary Disability Benefits Law. Commencing in 2020, NJ employees will be eligible for up to 12 weeks of paid benefits or 56 days of intermittent leave in a 12 month period. The benefits available will increase to a maximum of \$860.00 per week. Whereas previously an employer had the option to offer intermittent leave for the birth or adoption of a child, employers are now required to provide it. These benefits will continue to be funded through payroll deductions.

Prior to these amendments, the New Jersey Family Leave Act applied to employers with 50 employees or more. As of June 30, 2019, the definition of "employer" will expand to include employers with 30 or more employees. This expansion may be the most impactful to smaller New Jersey employers who have been previously exempt and must now bring themselves in compliance with the family leave law requirements.

New Jersey Family Leave now covers a broader variety of employees and their families. The definition of "family member" is expanded to include more categories of family members including "any other individuals that the employee shows to have a close association with the employee which is the equivalent of a family relationship." N.J.S.A. Sec. 34:11B-3. The definitions of "family leave," "child," and "parent" are now expanded as well to include situations in which a foster child is placed with an employee family or an employee has a child via a surrogate or gestational carrier. N.J.S.A. Sec. 34:11B-3.

This space does not allow for a comprehensive explanation of all the changes. To view the revisions to the language of the law, visit: https://www.njleg.state.nj.us/2018/Bills/A4000/3975_R3.PDF.

New Jersey Employees Now Eligible to Take Their Paid Sick Leave

Keeping our focus on New Jersey's efforts to improve the circumstances of New Jersey employees, this article discusses the progression of New Jersey's relatively new Paid Sick Leave Law which took effect on October 29, 2018. The law allows full-time and part-time employees employed on October 29 of last year to start accruing one hour of paid sick leave for every 30 hours worked. Employees can start to use those hours right about now – 120 days after the law's effective date. New Jersey employers must permit employees to accrue up to 40 hours of paid sick leave per year. If unused, the employee can carry over the 40 hours into the next year. Individuals hired after October 29, 2018 started to accrue their paid sick leave upon their hire date and can start to use those paid sick leave hours 120 days after the start of employment.



The law provides five circumstances in which an employee can use accrued paid sick leave. These five circumstances are: (1) time needed for diagnosis, care, treatment or recovery of an employee illness; (2) time needed for an employee to care for a family member's illness; (3) time needed for an employee or employee's family member to address a domestic or sexual violence situation; (4) time needed for an employee who can't work due to a workplace or school closure; and

5) time needed for an employee to attend a child's school-related or medical-related conference, meeting or function. In many instances, employers are permitted to request advanced notice and documentation from the employee to verify the necessity for paid sick leave.

An employer is in compliance with this new paid sick leave law if the employer already offers paid time off in the form of personal days, vacation days and sick days as long as their "paid time off" days can be used in the five circumstances set forth in the law.

The law does not apply to construction workers governed by collective bargaining agreements, health care employees, and public employees.

For more details on the Paid Sick Leave Law, read the law's language available at this link: https://www.njleg.state.nj.us/2018/Bills/A2000/1827_U1.HTM.



The Hazards of Unpaid Overtime in New York

New York employers need to be diligent in their observance of New York's overtime laws. Failure to follow the state's overtime laws can result in hefty penalties and even criminal conviction.

In a lawsuit over unpaid overtime wages, a guilty employer can be responsible for damages, including not only the unpaid overtime wages but also lawsuit costs, attorneys fees, prejudgment interest, liquidated damages and fees and costs incurred enforcing the judgment against the employer. These various categories of damages can add up quickly and painfully for an employer's bottom line. Additionally, an employer who fails to pay a judgment for unpaid overtime within 90 days of the judgment date incurs a 15% penalty on the judgment amount.

Employment attorneys take these cases on behalf of individual employees or groups of employees who are all similarly situated. When an attorney can file a class action or collective action lawsuit, the judgments or settlement amounts can be lucrative. In 2018, an action by over 10,000 New York home health aides claiming unpaid overtime wages resulted in a \$4 million settlement. In 2019, 1,000 CBS parking attendants fighting for unpaid overtime wages settled their lawsuit for \$10 million.

Employment attorneys representing plaintiffs are not the only ones targeting overtime wage violations. The United States Department of Labor in conjunction with the New York State Department of Labor and New York's Attorney General's Office are collaborating on both civil and criminal enforcement actions against employers suspected of "stealing wages" from New York employees.

New York Governor Andrew Cuomo's Fiscal Year 2020 Budget proposes criminal penalties for employers who knowingly withhold overtime wages from employees. An employer convicted of withholding overtime wages of less than \$1,000 would be guilty of a Class B misdemeanor while unpaid overtime of greater than \$50,000 could result in an employer's felony conviction. Currently, only repeated overtime wages offenses can result in an employer's felony conviction.

No employer wants to find itself on the losing end of this type of judgment or settlement, so review your overtime policies and practices carefully and verify that they are in compliance with the New York Labor Law and the federal Fair Labor Standards Act.

Lauren Murray Law Offices, LLC
www.laurenmurraylaw.com
1 International Blvd, Suite 400
Mahwah, NJ 07495
(845) 304-2685
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