

CLIENT ALERT

New Jersey and Washington D.C. Paid Leave Laws Gain Momentum

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In what appears to be a growing trend, both New Jersey and Washington D.C. have given preliminary approval to employee paid leave laws. On April 7, 2008, the New Jersey Senate passed a bill that, if signed by the Governor, would make New Jersey the third state to have a paid family leave law. Governor Corzine has expressed his support for that bill. California has implemented a paid family leave law and Washington State passed a similar bill in April 2007, with the requirement slated to commence in 2009. If signed, the New Jersey bill will become effective January 1, 2009, and paid family leave will commence on July 1, 2009.

On Tuesday, March 4, 2008, the Washington, D.C. Council approved the Accrued Sick and Safe Leave Act of 2008 ("ASSLA"), which was signed by the Mayor on March 20, 2008, and is currently undergoing review by the United States Congress. The congressional review period, typically 30 days long, is projected to end on May 13, 2008.

New Jersey

The New Jersey law would provide up to six weeks of temporary disability insurance to eligible employees taking leave, during which employees receive two-thirds of their salary, up to \$524 per week. By comparison, the California paid family leave program provides up to \$917 per week. The New Jersey program will be funded through employee payroll deductions, up to \$25.00 per year per employee in 2009, and up to \$33.00 in 2010. The proposed law will apply to all employers that employ one or more employees and pay wages of at least \$1,000.00 or more in a calendar year.

The New Jersey bill provides up to six weeks of temporary disability benefits, subject to a one-week waiting period, for an eligible employee taking leave (i) to provide care for a family member with a serious health condition, including providing psychological comfort and arranging third-party care for the family member; or (ii) to be with a child during the first 12 months after the child's birth if the individual, or the domestic partner or civil union partner of the individual, is a biological parent of the child, or the first 12 months after the placement of the child for adoption with the individual. The law broadly defines "family member" as a child, spouse, domestic partner, civil union partner or parent of a covered individual. Furthermore, like the Family and Medical Leave Act ("FMLA"), the law defines a "serious health condition" as an "illness, injury, impairment or physical or mental condition which requires: inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment or continuing supervision by a health care provider."

In contrast to the FMLA, the proposed New Jersey law does not require that employers restore employees to the position held prior to taking family temporary disability leave, or to an equivalent position. Therefore, employees who take leave that is subject to both the FMLA and New Jersey law must be reinstated to their prior position or to an equivalent position, while employees eligible to take leave only under the New Jersey law need not be reinstated.

Washington, D.C.

The Washington, D.C. ASSLA would provide employees with paid leave in connection with (i) an absence resulting from a physical or mental illness, injury, or medical condition of the employee; (ii) an absence resulting from obtaining professional medical diagnosis or care, or preventive medical care; (iii) an absence for family members' care due to physical or mental illnesses, injury, medical condition or need for diagnosis or care; and, (iv) an absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse. When the absence is the result of stalking, domestic violence, or sexual abuse, paid leave must be provided to enable an employee or family member to seek medical attention, to obtain services from a victim services organization, to obtain psychological or other counseling, to relocate, to take legal action including participating in legal proceedings, or to take other actions to enhance the individual's physical, psychological, or economic health or safety.

Unlike the New Jersey law, which provides eligible employees with a uniform amount of paid leave, the amount of ASSLA paid leave depends upon the employer's size and the amount of hours that an employee works. Employers with 100 or more employees must provide each employee with at least one hour of paid leave for every 37 hours worked, up to seven days per calendar year. Employers with 25 to 99 employees must provide each employee with at least one hour of paid leave for every 43 hours worked, up to five days per calendar year. Employers with one to 24 employees must provide at least one hour of paid leave for every 87 hours worked, up to three days per calendar year. Employees' accrued, unused leave carries over annually. Employees may not, however, use more than the maximum number of hours noted above in any given year, unless the employer chooses otherwise. Furthermore, employees may not be reimbursed for unused, accrued leave upon termination of, or resignation from, employment.

The ASSLA broadly defines "family members" as spouses, domestic partners, spouse's parents, children, foster children, grandchildren, spouses of children, parents, brothers, sisters, spouses of brothers and sisters, custodial children, and a person with whom an employee has a committed relationship and has shared a mutual residence during the preceding 12 months.

We will continue to monitor the progress of these bills. For more information, please contact the attorneys listed herein, or your regular Crowell & Moring contact.

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