

NJBIA

REPORT TO MEMBERS *By Melanie Willoughby, Senior Vice President for Government Affairs*

Stopping a New Paid Leave Mandate

NJBIA puts a great deal of time and effort into stopping legislation that imposes private-sector mandates. The latest one we have to tackle requires businesses to provide paid sick days to their employees. It may sound straightforward, but as currently written, the bill has the potential to be one of the most disruptive state mandates we've seen.

For starters, the legislation offers no small business exemption. Depending on their size, all employers would be required to provide either five (employers with less than 10 employees) or nine paid (employers with 10 or more employees) sick days per year and allow employees to carry unused sick days forward from year to year.

Nor would the legislation allow exemptions for part-time, seasonal, per diem or temporary employees. All employees would begin accruing sick time after they have worked 30 hours. That time could be banked from one year to the next. For retailers and restaurants, this is especially disruptive. A college student may work for an employer at the shore in the summer one year, and return the next only to request paid sick time. Not only would employers have to provide it, they would now have to deal with staffing problems at the height of their busy season.

Under the bill, employees would face no repercussions for failing to make arrangements to ensure that their company's operations were not affected by an absence. The bill specifically prohibits requiring employees to find workers to cover for them, even when their absence is foreseeable.

Also, the bill would disrupt standard workplace policies aimed at preventing sick-time abuse, such as requiring a doctor's note to justify use of sick time. Specifically, employers would be required to pay for any costs incurred by the employee in obtaining any required documentation, including the costs of gas and tolls.

Finally, if you think you're off the hook because you already provide paid sick leave, think again. The bill would give employees the right to sue if an employer takes "any adverse action" against them, whether the business already offers paid sick leave or not.

What constitutes an adverse action, however, is anything but clear. If an employee is moved off of a project because they simply haven't been in the office

enough to complete it, would this constitute an adverse action? Along the same lines, the definition of "retaliatory personnel action" includes "unfavorable reassignment." Couldn't any reassignment be unfavorable and subject to a lawsuit if an employee doesn't like it?

Furthermore, the bill contains a "rebuttable presumption" that an employer has done something illegal if any type of adverse action is taken within 90 days of an em-



> If you think you're off the hook because you already provide paid sick leave, think again.

ployee filing a complaint or informing any person about his or her rights. This provision would be a significant departure from discrimination lawsuits where the burden of proof resides with the employee.

By imposing wage and hour penalties for violators, the bill could subject employers to disorderly persons offenses over disputes about time off. In civil proceedings, the bill provides that "any actual damages suffered by the employee as a result of the violation plus an equal amount of liquidated damages may be awarded." And the bill provides no good-faith defense against these penalties for first-time violators.

Over the last few years, NJBIA has been successful in stopping or amending the Legislature's most onerous mandate. Paid sick leave is especially challenging because the issue seems so simple on the surface. To be successful, we need employers to contact their legislators to explain to them how this mandate will impact their business. Employers can find contact information at www.njleg.state.nj.us/members/legsearch.asp. **NJB**