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New Law Gives Maryland Employees Right to Use Paid Leave to Care for Family Members

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On May 22, 2008, Governor Martin O'Malley signed the Flexible Leave Act into law, requiring Maryland employers to allow their employees to use earned leave to care for immediate family members. The Act applies to employers with 15 or more employees. It allows such employees to use not only sick leave but also earned vacation time and compensatory time to care for sick family members. Where an employee does so, the Act prohibits employers from discharging, demoting, disciplining or otherwise taking adverse action against the employee. The Act also protects from such sanction employees who file a complaint, testify, or otherwise assist in an investigation against an employer that violates its provisions.

The Act, which takes effect October 1, 2008, has faced a storm of criticism. Indeed, several members of the business community had asked the governor to veto the legislation, but to no avail. Some opponents of the bill complain that the minimum size of the affected businesses (15) is too low and thus will unduly burden small and mid-size employers. Others charge that the Act can be easily abused because its provisions are vague. For instance, the law neither defines the term "illness" nor establishes the age of children it seeks to cover. Accordingly, critics charge that an employee could take off work when an adult "child" has a cold.

Despite the shortcomings, proponents argue that the Act is not as far-reaching as critics contend. Proponents point out that the bill does not require employers to grant new paid leave to employees. Further, the Act applies only to employers that provide paid leave under the terms of a collective bargaining agreement (CBA) or an employment policy. An employee also must use leave in compliance with the CBA or employment policy.

You've Got Questions? We've Got Answers!

Q: Who would be considered an "immediate family member" under the Act?

A: An immediate family member would include a spouse, parent, or child.

Q: When may employees begin to exercise their leave rights under the Act?

A: The Act goes into effect on October 1, 2008; that is when employees may begin to utilize their leave under the Act.

CAUTION: Unlike the Family and Medical Leave Act (FMLA), there is no length of service requirement before an employee is entitled to take leave under the Act. Additionally, employees may use paid leave that was accrued before October 1, 2008.

Q: Does the Act affect any rights afforded under FMLA?

A: No. An employee is still entitled to his/her FMLA rights.

HINT: Many employers have adopted policies that require employees to exhaust paid leave concurrently with FMLA leave. Since Maryland's Flexible Leave Act does not forbid that practice, it is strongly recommended that employers adopt such a practice if they have not done so already.

Q: Is it permissible to require that an employee provide advance notice of his/her intent to take leave under the Act?

A: Yes. An employer is free to design its leave policy in such a way that an employee must provide advance notice of his/her intention to take leave under the Act.

HINT: Leave policies must be evenly applied and should be designed to afford administrative consistency. This is especially important in light of the Act's anti-discrimination provision.

Q: Must an employer now adopt a paid leave policy to comply with the Act if the company does not already have such a policy?

A: No. There is no requirement that an employer adopt a paid leave policy to satisfy the Act.

CAUTION: Employers that have already adopted a paid leave policy or that elect to design such a policy must be aware of the consequences.

For assistance in drafting or revising Flexible Leave and/or FMLA policies, please contact Ober|Kaler's Employment & Labor Group.

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