

## NEW JERSEY'S NEW LEAVE LAW — SAFE ACT — TAKES EFFECT OCTOBER 1. IS YOUR COMPANY READY?

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On October 1, 2013, absent any extensions, New Jersey's Security and Financial Empowerment Act (NJ SAFE Act) goes into effect. Here are a few questions and answers to help you understand and comply with the NJ SAFE Act.

### What does the NJ SAFE Act do?

It requires employers to grant employees *unpaid leave* for up to **20 days** a year for matters related to *domestic violence or a sexually violent offense*.

### Does the NJ SAFE Act apply to my business?

The Act applies if you employed 25 or more employees for each working day during each of 20 or more calendar workweeks in the then-current or immediately preceding calendar year. The Act does not specify whether your employees *outside* of New Jersey count towards the 25, or just those you employ *in New Jersey*. Until there is clarification, you should err on the side of caution and include all employees everywhere when determining whether you meet the 25-employee threshold.

### Do I have to provide notice?

Yes, you must post the official notice of the Act in a *conspicuous place* at your worksite — available here: [http://lwd.state.nj.us/labor/forms\\_pdfs/lwdhome/AD-289\\_9-13.pdf](http://lwd.state.nj.us/labor/forms_pdfs/lwdhome/AD-289_9-13.pdf). You should also publish this notice where you post information about other policies and leave entitlements, including policy handbooks and employee manuals, both in print and online sources.

### Which employees qualify?

Employees who worked for you at least **1,000 hours** during the immediately preceding **12-month period**.

### What is a “matter related to domestic violence or a sexually violent offense”?

The NJ SAFE Act protects an employee or an employee's child, parent, spouse, domestic partner or civil union partner, who is a victim of:

- domestic violence — defined as violence by a spouse, former spouse, present or former household member, person with whom the victim has or is expecting a child, or a person with whom the victim has had a dating relationship; or
- a sexually violent offense, including sexual assault and criminal sexual contact.

The following are considered related matters for which unpaid leave must be provided:

1. seeking medical attention for, or recovering from, physical or psychological injuries caused by domestic or sexual violence;
2. obtaining services from a victim services organization;
3. obtaining psychological or other counseling;
4. participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the safety from future domestic violence or sexual violence or to ensure economic security;
5. seeking legal assistance or remedies to ensure health and safety; or
6. attending, participating in or preparing for a criminal or civil court proceeding relating to the incident of domestic or sexual violence.

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### How is the leave provided and counted?

- The leave may be taken *intermittently*, but in intervals of no less than one day. Therefore, an employee who takes only part of the day off under the Act will have the entire day count against his or her 20-day allotment.
- Unpaid leave runs *concurrently* with any paid vacation leave, personal leave, or medical or sick leave that the employee elects to use or which you require the employee to use during any part of the 20-day period of unpaid leave. *Your policies and practices should make clear that all leave time, to the extent permitted by law, run concurrently.*
- If the reason for leave is covered by *both* the NJ SAFE Act and either New Jersey's Family Leave Act or the FMLA, then the leave counts against the employee's entitlement under these other leave laws. Therefore, it is important for you to keep accurate records of all leave time requests and usage.

### How does an employee request NJ SAFE Act Leave?

Employees must provide advanced notice in writing of the need for the leave, if the leave is foreseeable. The employee is required to provide such notice *“as far in advance as is reasonable and practical under the circumstances.”* For example, if an employee had notice of a court date months in advance and requests leave the day of the court appearance, then you can arguably deny the leave under the Act. However, you will need to analyze your decision in light of many other factors, including, for example, your call off policy and practice, in deciding whether the leave was reasonably foreseeable. Be sure to update all of your practices and policies to include NJ SAFE Act leave.

### Can I require that employees provide documentation?

Yes. However, the Act requires you to keep all documentation supporting leave *strictly confidential*, un-

less the employee permits disclosure in writing, or disclosure is authorized by a federal or state law, rule or regulation. Treat all NJ SAFE Act documentation similar to employee medical information — including but not limited to keeping such information apart from a general, readily accessible employment file.

### What types of documentation support NJ SAFE Act leave?

- A court-issued domestic violence restraining order or other documentation of equitable relief
- A letter from the county or municipal prosecutor documenting the domestic violence or sexually violent offense
- A conviction for the domestic violence or sexually violent offense
- Medical documentation of the domestic violence or sexually violent offense
- Certification from a certified domestic violence specialist or the director of a designated domestic violence agency or rape crisis center
- Other documentation or certification of the domestic violence or sexually violent offense provided by a social worker, member of the clergy, shelter worker, or other professional who assisted the employee in dealing with the domestic violence or sexually violent offense

### What is my liability exposure?

The sole remedy for a violation is a private cause of action: an employee may bring suit in court against an employer who violates the NJ SAFE Act or who takes adverse action against the employee who requests leave under the Act within one year of the violation. Thus, you may face litigation and the civil costs that litigation may bring, including but not limited to reinstatement of employment, back and front pay, and the employee's attorneys' costs and fees. In addition, the Court is permitted to issue a civil fine between \$1,000 and \$2,000 for a first violation and not more than \$5,000 for each subsequent violation.

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To recap, you must do, and preferably should do, the following:

<b>MUST</b>	<b>SHOULD</b>
Post the notice in a conspicuous place by October 1, 2013.	Publish the notice wherever you post information on other policies, including in handbooks and manuals.
Provide 20 days of intermittent unpaid leave for matters related to domestic violence or a sexually violent offense.	Keep accurate leave records. Update your policies and practices to include NJ SAFE Act leave and make clear that all leave time, to the extent permitted by law, runs concurrently.
Protect confidentiality of any documents supporting NJ SAFE Act leave.	Treat all NJ SAFE Act documentation similar to employee medical information and keep the information apart from a general, readily accessible employment file.

We can assist you and your organization with revising your policies and procedures and taking all steps necessary for compliance with the NJ SAFE Act. ♦

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