Q&A: Georgia’s New Paid Sick Leave Law

Wednesday, June 28, 2017

On May 8, 2017, Georgia Governor Nathan Deal signed into law the Family Care Act, a new statute requiring certain employers to allow their employees to use up to five days of their available paid sick leave to care for immediate family members. This new law takes effect on July 1, 2017. What follows are several important questions and answers regarding the Family Care Act’s requirements, as well as a number of key takeaways for employers.

Q: When does the law take effect?
A: This new law will take effect on July 1, 2017.

Q: Which employers are covered?
A: The new law applies to employers with 25 or more employees, as well as to state government employees. Importantly, the law applies only to employers that already provide paid sick leave in addition to short-term or long-term disability plans.

Q: Which employees are covered?
A: Employees who work for salaries, wages, or other remuneration for at least 30 hours per week are eligible to use sick leave for the care of an immediate family member.

Q: Are employers required to provide paid sick leave benefits?
A: No. Unlike other states with paid sick leave laws, Georgia’s statute does not obligate employers to provide sick days. The law only requires that if an employer already provides workers with paid sick leave, then that employer is also required to allow employees to use a certain amount of their leave allowance to care for immediate family members.

Q: How much paid time is required?
A: Covered employers must allow eligible employees to use up to five days of paid sick leave for the care of an immediate family member. Again, this would apply only if the employer already has a paid sick leave policy. The statute also specifically provides that an employer is not required to allow an employee to use more than five days of earned sick leave per calendar year for the care of an immediate family member.

Q: When can an employee use the leave?
A: The statute does not entitle an employee to use sick leave until that leave has been earned, and an employee wishing to use such sick leave must comply with the terms of the employer’s sick leave policy.

Q: Who is an “immediate family member”?
A: The law defines “immediate family member” as “an employee’s child, spouse, grandchild, grandparent, or
parent or any dependents as shown in the employee's most recent tax return.”

**Q: How does this affect an employer’s obligations under the federal Family and Medical Leave Act (FMLA)?**

**A:** Georgia employers that are also covered by the FMLA will still be required to provide unpaid federal FMLA leave for eligible employees. How this new law and the FMLA will interact remains to be seen, but employers should remain cognizant of the potential interplay between these two statutes and keep themselves apprised of any related advancements.

**Q: What are the law’s enforcement provisions?**

**A:** The new law does not contain any enforcement or penalty provisions. The law is therefore more bark than bite. In fact, the law specifically states that it shall not be construed to create a new cause of action against an employer.

This does not mean, however, that employers can ignore the Family Care Act. Employers should consider taking affirmative steps to ensure that any paid sick leave plan is compliant with this law, and ensure that all human resources personnel and management employees understand its implications.

**Q: Are there special rules for employers that offer employee stock ownership plans?**

**A:** Georgia’s law contains a unique and somewhat puzzling exemption. Any employer that offers employees an employee stock ownership plan is exempted from the law. Although numerous states have laws allowing for this type of sick leave, this appears to be the only such exemption of its kind.

**Key Takeaways**

- If an employer does not provide paid sick leave, no action is required.
- If an employer has an “any reason” sick leave policy, such a policy is already compliant with the new law.
- Covered employers with policies providing paid time away from work that may be used only for health-related reasons (other than short-term and long-term disability policies) should review those policies and consider revising them to ensure compliance with the new Georgia law.
- Covered employees with policies allowing employees only to use paid sick time for their own illnesses or injuries need to be prepared to revise their policies to comply with the new law.

At the end of the day, Georgia’s Family Care Act is part of a nationwide trend toward encouraging employers to allow employees to use sick leave to care for their immediate family members. Employers should carefully review their paid time-off policies for compliance, train management personnel in the new requirements, and determine how the new law may raise issues related to the FMLA.
