

Akerman Practice Update

LABOR & EMPLOYMENT

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Mandatory Paid Sick Leave? Employers May Soon Be On The Hook if the Healthy Families Act of 2009 is Signed Into Law

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The Healthy Families Act of 2009 (the “HFA”) was introduced in both the House and the Senate last month, which, if signed into law, will require many employers to provide paid sick leave to their employees. Similar legislation was introduced during President George W. Bush’s second term, but never made it to a vote by Congress. President Barack Obama supported the earlier proposed legislation when he was a Senator and again during his presidential campaign. It is expected that President Obama will sign the HFA into law if it passes in the House and the Senate.

Notably, the HFA provides that any employer with 15 or more employees will be required to allow their employees to accrue up to 56 hours of paid sick leave each year. The accrual begins on the first day of employment and employees will be eligible to earn one hour of sick leave for every 30 hours worked. Employees will be able to use accrued paid sick leave after the 60th day of employment. While employees will be permitted to carry over unused paid sick leave from one year to the next, employers will not be required to permit employees to accrue more than 56 hours of paid leave in a year.

Other highlights of the HFA include:

- Employees cannot be required to find a replacement worker to cover his/her work shift before using paid sick leave. At the same time, employees will be required to schedule sick leave during a time that does not unduly interrupt an employer’s operations where possible;
- Employers will not be required to pay out unused accrued paid sick leave upon

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- termination regardless of whether the termination is voluntary or involuntary;
- Employees who are reinstated by employers within 12 months of the initial separation will be entitled to have any previously unused accrued paid sick leave reinstated. Additionally, reinstated employees will be entitled to use this time starting from the day they begin working;
- Leave must be granted upon an oral or written request by the employee that sets forth the expected duration of the leave. Where the leave is foreseeable, the request must be made seven days in advance of the anticipated leave;
- Medical certifications can be required under certain circumstances where the leave covers more than three consecutive work days. The employee will have up to 30 days after the first day of leave to provide the certification and employers will be prohibited from delaying the start of the paid sick leave because there is no medical certification; and
- Employers will be prohibited from terminating or discriminating against employees who use paid sick leave under the HFA. Further, the use of such time may not be a factor in any employment decision (i.e., whether to award a bonus or a raise) and may not be counted against an employee's attendance record under any attendance policy an employer may have.

The HFA will permit employees to use paid sick leave under a broad range of circumstances including for the employee's "physical or mental illness, injury, or medical condition" or for that of a child, parent, spouse "or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Time may also be taken to obtain "professional medical diagnosis or care, or preventive medical care, for the employee" or a family member (or quasi-family member) as described above. Finally, employees will be able to use paid sick leave where an absence results from domestic violence, sexual assault, or stalking and the employee is engaging in some other activity related to the incident (i.e., seeking medical attention, filing a criminal complaint, relocating, etc.).

Undoubtedly, the HFA will prove to be an unprecedented piece of legislation if signed into law since there are currently no federal laws – including the Family Medical Leave Act of 1993 – that require private employers to provide their employees with paid time off. Employers are urged to closely watch the status of the HFA as it may have far reaching effects on their pay, benefits and other cost structures.

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