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New York Law Prohibits Employers From Disciplining Employees for Lawful Absences

New York employers soon will have to comply with another new employment law. As of February 19, 2023, employers may not discipline employees for taking lawful absences pursuant to federal, state, or local law. The new law, which amends Section 15 of the New York Labor Law (NYLL), was signed by Governor Kathy Hochul on November 21. Here is what it means for New York employers.

Section 215 of the NYLL

Section 215 of the NYLL prohibits employers from penalizing, threatening, or discriminating or retaliating against employees for engaging in activities that are protected under the law. Such protected activities include making a complaint about a possible labor law violation, providing information to the New York State Department of Labor (NYDOL), starting a proceeding under the NYLL, testifying in an investigation or other proceeding under the NYLL, exercising rights that are protected under the NYLL, and causing the employer to receive an adverse determination from NYDOL.

The new amendment expands what is protected under Section 215 to now include an employee's use of any legally protected absence pursuant to federal, local, or state law. The amendment does not define what constitutes a "legally protected absence pursuant to federal, local, or state law," and it does not reference any specific federal, local, or state law. However, the law presumably protects the use of any absences or leaves granted by the New York Paid Family Leave Law, the New York Paid Sick Leave Law, the New York Emergency COVID-19 Paid Sick Leave Law, the New York Paid Leave for COVID-19 Vaccinations Law, the New York City Safe and Sick Leave Law, the Family and Medical Leave Act, and the Americans with Disabilities Act, as well as other laws that authorize employee absences or leaves.

No-Fault Attendance Policies

Many employers utilize what are known as "no-fault" attendance policies. Such policies typically add points to an employee's record for each absence regardless of the reason for the absence, with the accumulation of a certain number of points resulting in employee discipline.

The new amendment prohibits employers from "assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay." This provision effectively prohibits the use of no-fault attendance policies in New York.

Penalties for Violations of the Absence Law

Section 215 of the NYLL provides a private cause of action for current and former employees to initiate a lawsuit to recover damages from employers that violate their rights under the law. In addition, the NYDOL may require employers that violate Section 215 to provide liquidated damages, back pay, and reinstatement or front pay. The NYDOL can also impose civil penalties between $1,000 and $10,000 on first-time violators and up to $20,000 for subsequent violations.

Next Steps for Employers

With the February 19 effective date quickly approaching, employers should review their absence policies to ensure that they are consistent with the law and should not discipline employees for taking legally protected absences. Employers should reach out to counsel if they have any questions about the new amendment to NYLL Section 215.

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