

## *New Jersey Safe Act to Become Law on October 1, 2013*

*Lawrence Z. Kotler, Esq.*

On October 1, 2013, the New Jersey Security and Financial Empowerment Act (the “SAFE Act” or the “Act”) will take effect. Passed by the New Jersey legislature in July of 2013 and signed into law by Governor Christie, the SAFE Act will provide unpaid leave time for certain employees, who are themselves or whose defined family members are, victims of domestic violence and/or sexually violent offenses.

***Purpose*** The SAFE Act is intended to provide support to employees who are victims of domestic violence and/or sexually violent offenses, in a manner that recognizes the practical consequences of such acts upon the victims and their families. As such, qualifying employees are permitted to take time off from work to deal with the medical, legal and psychological consequences of domestic violence and/or sexually violent offenses without fear of losing their jobs.

***Who is covered*** Not all employers will be subject to the requirements of the Act nor will all employees qualify for its benefits. While other “leave” laws, such as the New Jersey Family Leave Act and the federal Family Medical Leave Act apply to New Jersey employers with 50 or more employees, the SAFE Act will apply to employers employing 25 or more employees. Employees who will qualify for the Act’s benefits must have been employed by their employer for at least 12 months and for at least 1,000 hours during the 12 month period immediately preceding the leave.

***Qualifying leave*** Qualifying employees who have been a victim of domestic violence and/or sexually violent offenses, or whose “...child, parent, spouse, domestic or civil union partner ...” has been a victim will be entitled to unpaid leave of 20 days in any one 12 month period for the following purposes:

- (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 of the employee or the employee's child, parent, spouse, domestic partner, or civil union partner;
- (5) Seeking legal assistance or remedies to ensure the health and safety of the employee or the employee's child, parent, spouse, domestic partner, or civil union partner; or
- (6) Attending, participating in, or preparing for a criminal or civil court proceeding relating to an incident of domestic or sexual violence.

**Notice** When possible under the circumstances, an employee must provide the employer with written notice of the employee's need to take leave. In recognition of the fact that the need for leave will not always be foreseeable, the SAFE Act also provides that notice be given "as far in advance as is reasonable and practical under the circumstances."

Although leave under the SAFE Act is unpaid, the employee may elect, or the employer may require, that the employee use accrued paid time off during the leave, in which case the paid leave will run concurrently with the unpaid leave under the Act.

**Documentation** As with other leave laws, an employer faced with a request for leave under the SAFE Act may require supporting documentation. Unlike other leave laws however, the form of documentation under the SAFE Act may be chosen by the employee, from one of the following:

- (1) A domestic violence restraining order;
- (2) A letter or other written documentation from the county or municipal prosecutor;
- (3) Documentation of the conviction of a person for the domestic violence or sexually violent offense;
- (4) Medical documentation of the domestic violence or sexually violent offense;
- (5) A certification from a certified Domestic Violence Specialist or the director of a designated domestic violence agency or Rape Crisis Center; or
- (6) 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.

***Employer Obligations***

Since the central purpose of the legislation is to provide job protection to employees under circumstances of domestic and/or sexual violence to themselves or their family members, the Act prohibits employers from reducing or rescinding employee benefits or from otherwise discriminating or retaliating against an employee for exercising rights under the Act. Employers also must keep strictly confidential all information supplied by the employee in connection with leave applied for and/or taken under the SAFE Act.

***Violation of the Act – Remedies***

In addition to existing common law tort remedies, employees claiming a violation of the Act may institute a civil action in State Court within one year of the alleged violation. If prevailing, an employee may be awarded:

- (1) Reinstatement to the same or an equivalent position;
- (2) Reinstatement of full fringe benefits and seniority rights;
- (3) Compensation for any lost wages and benefits;
- (4) Payment of reasonable costs and attorney's fees.

Employers may also be subject to fines and restraining orders for violation of the Act.

The SAFE Act creates new rights for employees and imposes additional obligations on New Jersey employers. Employers with 25 or more employees should take appropriate actions to be SAFE Act compliant before October 1, 2013. Among any other steps to take, employers must be sure to conspicuously post the Act in a manner to be prescribed by the Commissioner of Labor and Workforce Development. Employers will also be well advised to make the appropriate changes to employment handbooks and to educate management and supervisory level employees in the application of the Act.

---

The content of this article is for informational purposes only and does not contain full legal analysis of the subject matter of the article or a complete recitation of any law to which reference is made in the article. It is not, nor is it intended to be legal advice, nor is it intended to create an attorney/client relationship.