Rhode Island Paid Sick Leave Law Lacks Clarity on Several Key Issues

By Alicia J. Samolis and Michael A. Gamboli

After many revisions, the Rhode Island Healthy and Safe Families and Workplaces Act (the "Sick Leave Law") was signed into law last week. The basics are as follows:

- The law will go into effect July 1, 2018. The Rhode Island Department of Labor & Training will likely issue a required notice that employers will have to distribute concerning the law prior to the effective date, but the content of such notice(s), if any, are not set forth in the statute. The paid portion of the law only applies to employers with eighteen or more employees that work in Rhode Island. When counting employees, almost all employees, regardless of hours normally worked, are included.
- Section 28-57-4(c) states that employers with less than 18 employees cannot take adverse actions against an employee for taking leave up to 24 hours (in 2018), 32 hours (in 2019) and 40 hours (thereafter). In addition, § 28-57-6(k) actually references accrued "unpaid sick time". Thus, from the face of the statute, there would appear to be an unpaid leave requirement for the smaller employers, much like the Massachusetts statute, despite the emphasis on paid time and larger employers. Interestingly, for part time employees of small employers, this would entitle them to more leave (albeit unpaid) than their counterparts working at larger employers.
- The law makes clear that employers can comply with its requirements through a vacation or other time off policy rather than a sick time policy if the policy otherwise satisfies the amount and manner in which the leave can be taken. What is not clear is if the accrual and carry-over provisions must be followed. Section 28-57-4(b) appears to exempt anyone with such a paid time off or vacation policy that provides 24 hours of leave in 2018, 32 hours in 2019 and 40 hours thereafter from the accrual, carry-over and payout provisions of the statute. Despite the language of the statute, this interpretation is questionable as those provisions would be useless except to part-time employees and the law in fact speaks specifically to accrual for full time employees in § 28-57-14(b). However, without the exemption, employers would not likely want to wrap the sick time language into their vacation or paid time off policy because they could not cap accrual or carry-over, only use. This would lead to a large vacation payout upon termination under a different law. If the sick time is kept separate, no payment is owed at termination so the total accrued sick time amount is not critical.
- The leave is not just for the employee's own sickness and treatment. It can also be used for a host of other reasons, such as routine preventative care of the employee or a family member, care of a family member with an illness, closure of the employer's business or the employee's child's school by public health officials and leaves related to domestic violence, sexual assault and stalking affecting the employee or an employee's family member.
- The law requires the employer give one hour for every 35 hours worked, up to a maximum of 24 hours of leave in 2018, 32 hours in 2019 and 40 hours thereafter. It is important to realize that an employer cannot just take the maximum amount, divide it by 52 and accrue the time weekly at that rate. The numbers are set up so that the employee accrues more time at the beginning of the year than the end of the year. Alternatively, a monthly accrual schedule is provided which if used will still be compliant even if the employee (including nonexempt employees) actually works more than their schedule.
- Unused time must carry over, but an employer can always cap the amount of time used in any calendar year to 24 hours (in 2018), 32 hours (in 2019) and 40 hours (thereafter).
- Exempt employees are considered to have worked 40 hours (meaning have a normal accrual of 1.14 per week) unless their normal schedule is less than 40 hours, in which case their accrual will be based upon their normal work week (for example, an exempt employee whose schedule is 30 hours per week accrues 0.85 hours per week).
- Employees accrue the time immediately, but cannot use it until employed 90 days (regular employees),

150 days (seasonal employees) or 180 days (staffing firm employees).
- In the normal course, employers may only ask for documentation (such as doctor's notes) if the employee is out for three full consecutive workdays. No documentation can be required for domestic violence, sexual assault or stalking related leaves. Documentation can be requested if the use of the time is within two weeks prior to a scheduled termination or to avoid discipline due to a pattern of misuse (i.e., repeatedly taking sick time just before a vacation or weekend).
- Employers may require employees to use sick time in four hour (or less) increments, which will avoid the situation of employees using one hour every Friday afternoon.

Unfortunately, the statute is murky as to several details. In addition to the aforementioned important questions about requirements for small businesses under the law, if any, and the issue of whether paid time off and vacation pay policy exemptions apply regardless of accrual and carryover concerns, there is also a question as to how policies that award the time in the full accrual amount on January 1st ("Lump Sum Policies") relate to the carryover requirement. In one portion of the statute, it is clear that carry-over provisions would not apply, but in another portion of the statute, it speaks to paying out employees unused time to avoid carryover in the context of a Lump Sum Policy. It is not clear as to whether the employer can simply choose whether to pay an employee for the unused time if they have a Lump Sum Policy or if the payment was intended to apply to employers who are changing from an accrual to a Lump Sum Policy. Hopefully, regulations or guidance will be issued to answer some of these questions.

Finally, two important legal issues are raised by the statute that go beyond paid time off considerations:

- The statute provides that if the employer has details regarding health information or information pertaining to domestic violence, sexual assault, sexual contact or stalking about the employee or the employee's family member, the employer must not disclose the information unless required by law or where consented by the employee. Unlike the protection under the American with Disabilities Act, which is limited to information concerning the employee's medical condition, there are no exceptions to this rule. Thus, as written, an employer could not provide the information to a court or insurer that would help their defense of a claim (but was not required by law).
- The law states that "[w]hen a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer within the State are entitled to all earned paid sick and safe leave time they accrued when employed by the original employer, and are entitled to use earned paid sick and safe leave time previously accrued." This section will come into play both in the case of an asset sale where the purchaser hires the seller's employees and for employers who hire temporary employees after a trial period. In both cases, the employee will keep their accrued sick time and the new employer must let them use it immediately.

Wile employers can try to start incorporating the substance of the law into their year-end handbook revisions, such incorporation will be difficult absent guidance on the law's ambiguities and the details of the required notice(s), if any.

Rhode Island employers are advised to watch for clarification of the ambiguities in the law so that they can adequately prepare to implement the new law before the effective date.

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