



Municipal Excess Liability Joint Insurance Fund

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MEMORANDUM

TO: All Members

FROM: Fred Semrau, Fund Attorney

DATED: November 1, 2018

RE: NEW LEGISLATION

Two new important employee bills have been enacted this year. The first, the Diane B. Allen Equal Pay Act (“Pay Equality Bill”) became effective July 1, 2018, and the New Jersey Paid Sick Leave Act (“Paid Sick Bill”) became effective on October 29, 2018.

The Pay Equity Bill (N.J.S.A. 10:5-12) prohibits employers from paying any member of any protected class under the New Jersey Law Against Discrimination (“NJ LAD”) lower wages and benefits than other employees who perform “substantially similar work.” If an employer pays one employee more than another employee who is a member of a protected class for “substantially similar work” (viewed as a composite of skill, effort, and responsibilities), the employer will have to establish the basis for that pay discrepancy. There is also an increased statute of limitations from two to six years for claims alleging pay inequality or discrimination, and mandatory treble damages for successful plaintiffs. New Jersey’s Pay Equity Bill provides broader protections than do other states, in that its protections are not limited to gender.

The Paid Sick Leave Law (N.J.S.A. 34:11D-2) requires employers to provide earned sick leave to New Jersey employees, and offer their employees one hour of sick leave for every 30 hours worked. Covered employees will be eligible for paid sick leave after 120 days of employment, and then permitted to use up to 40 hours of sick benefit per year. In lieu of tracking each hour worked and earned, employers may offer 40 hours of paid sick time at the beginning of each benefit year, or otherwise utilize an existing paid-time-off policy, so long as it confers equal or more paid leave benefits than those provided for in the Act. Employers are free to set the parameters of the benefit year, but once set, they may not be changed without prior notification to the New Jersey Department of Labor and Workforce Development.

Employees may use accrued sick time for their own illness, or for a family member, to recover from domestic violence affecting them or a family member, to attend a school conference or meeting, and for childcare purposes when schools, workplaces or daycare facilities are closed by order of a public health official due to a public health concern.

Not every employee in New Jersey is entitled to paid sick leave under the Act. Importantly, the Act excludes certain construction workers employed under an existing collective bargaining agreement, per-diem health care workers, and public employees who are already eligible for more generous sick leave.

The Act grants employees a private right of action to sue employers and seek actual damages, as well as liquidated damages. The Act also contains an anti-retaliation provision, creating a “rebuttable presumption” of retaliation if an adverse employment action is taken within 90 days of engaging in any protected activity under the Act (such as using paid sick leave, filing a complaint, or explaining employee rights to co-workers).

Nothing in this memorandum should be construed as legal advice. You are encouraged to consult your Labor and/or Municipal Attorney for further information.