



No Fault No More: New York Bans Discipline for Legally Protected Absences

Insights

11.22.22

New York employers who maintain no-fault attendance policies will soon need to change their practices to ensure employees are not penalized in any way for any absence legally protected under federal, state or local law. New York lawmakers passed an amendment to the New York Labor Law earlier this year that prohibits employers who maintain “no fault” attendance policies from assessing points or demerits for absences or otherwise disciplining employees who have used any absence protected under federal, state, or local law. Governor Hochul has now signed the legislation into law and it will take effect February 20, 2023. Here’s what employers need to know about this new measure.

No Fault Attendance Policies and New York’s New Law

No fault attendance policies are aimed at curbing absenteeism and tardiness in the workplace. Such policies typically utilize a point system, whereby employees accrue points for missing work or being tardy, regardless of the reason for the absence. Depending on the company’s policy, employees are disciplined or even fired if they hit a certain number of points. Such policies can discourage employees from taking job-protected leave or time off to which they are entitled under law. In certain scenarios, in fact, they can violate workers’ rights to take leave.

The new law in New York, which we summarized earlier this year, makes abundantly clear that no-fault attendance policies that penalize an employee for taking any legally protected absence are prohibited. The law bans employers from penalizing, discriminating, or retaliating against an employee because they took any legally protected absence. This specifically includes assessing any points or demerits which subjects or could subject an employee to disciplinary action.

Protected absences would include leave under the state sick leave law, FMLA, and New York’s Paid Family Leave law, among a multitude of others.

Next Steps

This law should not come as a surprise for New York employers, as many leave laws already contain anti-retaliation and anti-discrimination provisions. However, the new legislation makes abundantly clear that no-fault attendance policies cannot penalize workers for taking protected leave.

Accordingly, you must review your absence control policies to ensure they do not run afoul of this new law. You should also train your managers, HR personnel, and anyone else involved in tracking employee attendance on this new measure.

We will continue to monitor developments on the legislation, so make sure that you are subscribed to Fisher Phillips' Insights to get the most up-to-date information direct to your inbox. If you have any questions on how to comply with any of these new laws, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our New York City office.

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