

CLIENT ALERT: Massachusetts Domestic Violence Leave Law Clarified In New State Attorney General Advisory

On October 28, 2014, the Office of the Massachusetts Attorney General (“AGO”), issued an **advisory** on the “Employment Leave for Victims and Family Members of Abusive Behavior” law also known as the “Domestic Violence Leave Act.” The AGO is responsible for enforcement of the Act. The law provides employees with 15 days of protected paid or unpaid leave during any 12-month period, protects employees from discrimination for exercising rights under the law, provides for confidentiality of certain employment information related to domestic violence, and requires employers to notify employees of their rights and responsibilities under the law. A detailed overview can be found in MBJ’s Client Update *Massachusetts Creates Right to Leave of Absence Related to Domestic Violence* on August 14, 2014. The law became effective on August 8, 2014.

The new guideline, entitled *An Advisory from the Attorney General’s Fair Labor Division Concerning M.G.L. c. 149, s. 52E* (the “advisory”), provides important clarification about which employers are subject to the requirements of the Domestic Violence Leave Act, which covers only employers with 50 or more employees. The advisory opines that the law “applies to public and private employers who employ 50 or more employees in Massachusetts.” Thus, employers with fewer than 50 employees in Massachusetts but having employees elsewhere are not covered, according to the advisory.

The advisory also clarifies the notice provisions of the law, noting that a specific form of notice is not required, but suggests that notice may be provided in a “New Employee manual, an addendum to existing employee manuals, memos to employees, or letters or e-mails to employees.” The advisory also authorizes posting notice “in a conspicuous place” in a manner consistent with the state minimum wage law’s notice posting requirements.

The Attorney General’s advisory states that an employee must first exhaust all annual or vacation leave, personal leave and sick leave already available to the employee prior to requesting or taking leave under the Law, unless the employer waives this requirement. Nevertheless, the statute grants employers the “sole discretion to determine whether any leave taken under the Law is paid or unpaid.” The advisory does not discuss whether domestic violence leave can be designated by an employer to run concurrently with other leave such as leave under the Family and Medical Leave Act, in situations where the absence could qualify under more than one statute. Also, because the advisory was published prior to the enactment of Massachusetts’ new mandatory earned sick time leave law, there may be further guidance from the AGO regarding what effect the earned sick time leave law might have on the domestic violence leave rights.

MBJ will continue to provide updates on new developments as they occur.

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