

 Labor & Employment Group

March 25, 2020

***New Jersey Legislature, Bill No. 3848  
“An Act concerning time off from work in connection with  
infectious disease”***

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On March 20, 2020, New Jersey Governor Phil Murphy signed into law Bill No. A-3848, prohibiting employers, during the pending COVID-19 Emergency, from terminating or otherwise penalizing employees who request or take time off from work for a specified period based on the recommendation of a New Jersey medical professional “because the employee has, or is likely to have, an infectious disease . . . which may infect others at the employee’s workplace.” Employers also are required to reinstate such employees to “the position held when the leave commenced with no reduction in seniority, status, employment benefits, pay or other terms and conditions of employment” following the recommended period of time off.

A-3848 is one of more than 20 bills passed by the New Jersey Legislature in response to the COVID-19 pandemic.

Notably, the bill does not define “employer” or “employee.” Further, A-3848’s prohibition on adverse employment action based on a *request* for time off applies only “during the Public Health Emergency 8 and State of Emergency declared by the Governor in Executive 9 Order 103 of 2020 concerning the coronavirus disease 2019 10 pandemic . . . .” This limitation does not appear to apply to the prohibition on refusing to reinstate an employee who has *taken* leave. Thus, unlike other laws requiring an employer to provide medical leave, the bill does not appear to limit the length of time the employee may be off from work and still be entitled to reinstatement, other than to a “specified period of time” recommended by the medical professional.

Also notably, the medical professional’s leave recommendation need not relate to COVID-19, but rather any “infectious disease, as defined [in N.J.S.A. 26:13-2], which may infect others at the employee’s workplace.” N.J.S.A. 26:13-2 broadly defines “infectious disease” to “mean[] a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, virus, or prion. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.” While this definition encompasses both communicable and non-communicable infectious diseases, the bill limits coverage to those diseases which “may infect others in the employee’s workplace.”

It is important to note that in providing protection for both employees who have, and are “likely to have,” an infectious disease, the Legislature apparently intended to cover employees who have been exposed to a such a disease and have not received test results, but in the judgment of a medical professional are nonetheless likely to be infected.

A-3848 provides that an employee alleging violation of the statutory protections may file a written complaint with the New Jersey Commissioner of Labor and Workforce Development or file suit in court “to seek reinstatement to employment.” If a violation is proven, “the court or the

commissioner shall order the reinstatement the employee to the position previously held with no reduction in seniority, status, employment benefits, pay, and other terms and conditions of employment and fine the employer \$2,500 for each violation . . . .”

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