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Labor & Employment Alert

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New York Labor Law now prohibits discipline for protected absences

By Christopher J. Stevens and Vincent E. Polsinelli¹

New York employers should review and revise their attendance policies now to ensure compliance with this new law.



What's the Impact?

- / Amendments to the New York Labor Law will go into effect on February 19, 2023.
- / Employers are prohibited from issuing “points” or disciplining employees in any way for taking a broad range of legally protected absences.
- / “No-fault” attendance policies that issue points or occurrences for legally protected absences of any kind are expressly prohibited.

Effective February 19, 2023, employers in New York will be prohibited from disciplining employees who take legally protected absences. This includes issuing “points” to employees under a “no fault” attendance policy or taking other similar action. The new restriction is the result of a recently passed amendment to Section 215 of the New York Labor Law (NYLL), which prohibits employers from threatening, penalizing, discharging, discriminating, or retaliating against an

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employee for using a legally protected absence under federal, local, or state law. The amendment expressly prohibits employers from “assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time” that might eventually result in an employee’s discipline.

Attendance policies and legally protected leave

It will now be a violation of the NYLL to allocate “points” or “occurrences” under a “no-fault” attendance policy to penalize employees for absences or lateness that result from a legally protected reason. “Legally protected absence” is defined broadly as any absence covered by federal, local, or state law. The mere issuance of attendance points following a protected absence may now be deemed retaliation and an adverse employment action, even if it does not result in tangible disciplinary action or termination.

The amendments apply to any absences or leaves protected under any federal, state, or local law. Many such laws already have provisions that prohibit retaliation. The amended NYLL will add protections to those that do not.

Penalties for violations of the amended Labor Law

Section 215 of the NYLL creates a private right of action for employees to seek monetary damages stemming from employer violations of this amended statute. Current employees may seek to enjoin an employer’s allegedly unlawful conduct, as well as liquidated damages. Employees who claim that their employment was terminated in violation of this statute can also seek reinstatement, back pay, front pay, attorneys’ fees, and liquidated damages.

The New York State Department of Labor (DOL) is also authorized to impose civil penalties against employers of up to \$10,000 for first-time violations, increasing up to \$20,000 for all subsequent violations. The DOL can also impose damages on behalf of wrongfully treated employees.

What can employers do to prepare?

New York employers may need to make changes to their attendance policies and provide additional training to managers and/or human resource professionals to ensure compliance with this new law. Employers should review attendance policies to ensure compliance with the NYLL as amended. Special attention should be given to attendance and leave policies that assign demerits, points, or deductions to employees for absences from work. Employers should communicate any policy changes to all employees. Additional training to the administrators of employer attendance policies may also be warranted to ensure that no adverse actions are taken against employees for taking protected absences.

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