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Seasons Greetings



“Tip of the Month”

Sick Leave in New Hampshire

Taking time off for the flu? New Hampshire has no law that requires employers to provide paid sick leave for their employees. Most employers provide this benefit voluntarily. When they do, however, those employers providing paid sick leave must manage this benefit consistent with their written policy. Sometimes federal law can also apply. Here is a quick review.

NH Voluntary Sick Leave Plans. NH Employers must give their employees written notice of any voluntary paid sick leave policy. This notice can be posted in the workplace or given in an offer letter or employee handbook. The sick leave policy clarifies how employees earn leave and how leave can be used. The employer should also specify whether leave carries over and accumulates, or not, and whether sick days are paid upon termination, or not. Paid sick days are considered wages unless the policy specifies otherwise.

Salaried Employees. State and federal laws restrict the rights of employers to withhold pay from a salaried employee’s pay check for absence due to illness. Watch out for costly penalties imposed on violations of wage and labor laws.

The Family Medical Leave Act (FMLA) applies to employers with 50 or more employees. FMLA allows an employee up to 12 weeks of unpaid leave for illness or injury that constitutes a “serious health condition.” The health condition is serious if it involves hospitalization or continuing treatment by a health care provider for incapacity lasting at least three consecutive days. This can also apply to the employee’s immediate family – parent, spouse or child – and can last up to 26 weeks if the serious health condition arose from military service. An employer may elect for some FMLA leave time to be paid by the employer’s voluntary sick leave policy.

The Americans with Disabilities Act (ADA) has a state counterpart known as the NH Law Against Discrimination. These laws may require an employer with 15 or more employees to allow some time off for illness that qualifies as a disability. If the employee can perform the job with reasonable accommodations, the employer cannot discriminate against that employee, such as by disciplinary action for absence. Such accommodations could include a medical leave of absence to regain work capacity.

The Occupational Safety and Health Administration (OSHA) recommends against requiring an employee to come into work sick, especially with a contagious flu like the H1N1 virus. Employers must provide a workplace “free from recognized hazards.”

If you need help with a sick leave policy, or other employment law question, please do not hesitate to give us a call at 668-1971, or contact us by email at mailbox@biz-patlaw.com.

Happy Holidays!

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