RI Increased Employee Absences (and Headaches) due to the 2014 Temporary Caregiver Leave Law

Description

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Effective January 1, 2014, all Rhode Island employers must allow their employees four (4) weeks of time off per year under the Temporary Caregiver Insurance ("TCI") Law. Like Temporary Disability Insurance ("TDI"), the program will be financed through employee payroll deductions and administered by the Department of Labor and Training ("DLT").

The TCI law allows employees to collect state benefits for any time in which the employee is unable to perform his or her regular and customary work because he or she is: (1) bonding with a newborn child or a child newly placed for adoption or foster care; or (2) caring for a child, step-child, child of a domestic partner, child to whom the employee stands in loco parentis, parent, parent-in-law, step-parent, parent of a domestic partner, an individual standing in loco parentis to the employee, grandparent, spouse, or domestic partner who has a "serious health condition." The TCI law defines "serious health condition" as any illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, residential healthcare facility, or continued treatment or continuing supervision by a licensed health care provider. Employees are not allowed to collect TCI if they can work part-time or require leave for less than seven (7) days.

The law has several significant – and detrimental – implications for employers across the state. First, the law applies to all employers, no matter how small. Thus, employers with less than fifty (50) employees who had no previous obligation to provide time off for caregiving reasons under the state or federal Family Medical Leave Act ("FMLA laws") will now be required to give such leave.

Second, unlike the state and federal FMLA laws, the new TCI law covers all employees – even those who just began employment for their company. Thus, while employers can craft policies to ensure other leaves will run concurrently with TCI leave, they cannot avoid the fact that in many circumstances, new employees will be able to tack on the TCI leave to later leaves under FMLA laws. For example, it is quite conceivable that an employee will be able to take four (4) weeks TCI leave after being with an employer for ten (10) months, but because the leave would not yet be properly classified as FMLA leave, the employer would have to give another thirteen weeks for the same care giving purpose two (2) months after the TCI leave (when the employee becomes eligible for FMLA leave).

Third, while employers are not responsible for paying employees during this time, employees will be paid at least part of their normal salary from the government through the existing state TDI program. Undoubtedly, employees will be taking more time off to care for family members because for the first time they will be compensated for the leave. Employers must continue to provide health insurance to enrolled employees during the leave, but employees remain responsible for any employee-shared costs associated with the health insurance benefits.

Finally, the practical application of the law is likely to lead to easy abuse and misuse of the leave by employees. Unlike FMLA laws, the employer has no right to seek independent corroboration of either the employee's relationship to the ill family member or documentation of the family member's serious health condition. Rather, the protection for the leave stems solely from the DLT's approval of the application for benefits. Furthermore, although the law purports to require the employees to provide employers with written notice of their intent to take a leave of absence at least 30 days before the leave will begin unless the leave was unforeseeable, in reality the only way to challenge the lack of notice would be for the employer to file a

potentially expensive lawsuit. In other words, there is no way for an employer to block the employee's receipt of the benefits (and corresponding leave protection) because of lack of notice by filing an objection with the DLT.

What should employers do now?

Employers must amend their policies to comply with the new TCI law. Employers are required to display the new **TCI leave notice** immediately. Employers should also modify their leave policies to indicate TCI leave will run concurrently with any other leave and to require documentation of DLT approval of any application of TCI benefits. Further, employers can require vacation or Paid Time Off ("PTO") leave be used during TCI leave and pay only the difference between the employee's usual rate and the TCI benefits if, and only if, the employer modifies their PTO/vacation policies to provide such reduced payment in other situations where employees are receiving compensation for their leave (such as jury duty leave). This revision may reduce the likelihood employees take unnecessary TCI leave given that it has a negative effect on their vacation accrual. Finally employers should be aware that they can – and should – request medical documentation if (and only if) the leave would potentially also be protected under FMLA or disability discrimination laws.

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