

Employee Leave: No Longer Just Family Or Medical

03/07/17

New Jersey employers should be aware that their employees may be entitled to more than just family and medical leave. Employees who volunteer outside of their employment may be entitled to leave for that volunteer work in certain circumstances. So, for example, emergency responders, including volunteer firefighters, volunteer first aid squad members and volunteer rescue or emergency squad members who respond to fire or emergency calls must receive unpaid leave when they miss work to respond to a qualified emergency.

A qualified emergency includes responding to an emergency alarm or responding to a state of emergency declared by the Governor of this State, or President of the United States. In the event of such an emergency, first responders must notify their employer at least one hour prior to the scheduled shift that they are responding to an emergency and will be absent from work. Upon return, the subject employee must provide a copy of the incident report and certification by the incident commander or other official confirming that the employee was actively engaged and necessary for the emergency response. The report should set forth the date and time the volunteer was ultimately relieved of emergency service duties and when they were free to return to work. If an employee will miss more than one consecutive day of work due to emergency volunteer service, the employee must notify the employer each day in advance of his/her shift. And although the employer cannot require an employee to use otherwise available paid time off, the employee may choose to do so.

Essential employees, by contrast, may be denied leave under this policy as permitted by state law. The term "essential employee" is not defined in the law, rather it is defined in other employment-related laws as an employee whose absence would create an undue hardship on the employer. An employer should effectively be careful not to penalize the general, non-essential employee for responding to an emergency situation as an outside volunteer. In other words, an employer should not discipline or negatively evaluate an employee's job performance because that employee responded to a qualified emergency.

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