

What Employers Need to Know About New Jersey's Voluntary Emergency Responder Leave

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It may be common knowledge that volunteer emergency responders are entitled to unpaid leave in New Jersey for emergency response services. But does that mean an employer of volunteer emergency responders has to excuse from work any such employees who casually encounter emergencies? Do these employees get time off from work anytime there is a state of emergency? The short answer is “not necessarily.”

According to New Jersey law, a volunteer emergency responder is an “active member in good standing of a volunteer fire company, first aid, rescue or ambulance squad, or volunteer in a county or municipal office of emergency management.” There is no prohibition in the law that prevents an employer from asking for proof of such membership from its employees. In addition, the law permitting unpaid leave does not apply to any employee who is deemed an “essential employee” by statute or contract.

An employer cannot, however, “terminate, dismiss or suspend” a volunteer emergency responder who does not report for work because he or she is actively engaged in responding to an emergency alarm or serving as an emergency responder during a state of emergency declared by the President of the United States or the Governor of New Jersey, as long as the voluntary emergency responder fulfills the required obligations to his or her employer under the law. A minimum one-hour notice to an employer before the responder’s scheduled work time is required for leave to fulfill volunteer obligations. Also, upon the responder’s return to work, he or she must provide the employer with a copy of the incident report and a certification by the incident commander, or other official or officer in charge, affirming that the volunteer emergency responder was actively engaged in, and necessary for, rendering emergency services. This report and certification must also set forth the date and time the volunteer emergency responder was relieved from emergency duty by that officer or official. If a volunteer emergency responder is involved in more than one day of providing emergency services, the incident commander or other official or officer in charge must direct that appropriate notice be given to that employee’s employer each day that he or she is required to be absent from work. Employers should note that there is no time limit in the law on the number of days that a volunteer emergency responder may be absent to attend to an emergency.

Employers are not required to pay an employee for leave time missed while serving as a volunteer emergency responder. However, a volunteer emergency responder can use any available vacation or sick days in order to get paid for those missed work days.

Note that there is no provision in the volunteer emergency provider leave statute with regard to retaliation against an employee who takes leave under it. Similarly, there is no clause in the law that provides for a cause of action against an employer for denial of the leave or retaliation for taking the leave. The notice provisions may be one area of concern for employers, however. For instance, in certain emergent situations it may be difficult for a volunteer emergency responder to notify an employer one-hour before work that he or she cannot attend work. In those situations, employers will have to decide whether to waive the notice requirement or strictly enforce it. Either way, employers should be careful that they enforce notice requirements in a consistent and non-discriminatory manner, so as not to run afoul of anti-discrimination laws.

TAKEAWAY: A 911 Call May Require Employer Response Too!

Attorney

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