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KD Employment Alert: NYC Mayor Announces Proposal to Require Employers to Provide Paid Vacation

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Mayor De Blasio has announced proposed legislation that would require most New York City employers to provide two weeks of paid vacation per year to their employees. If enacted, the new law would be the first of its kind in the United States, making NYC the only city in the country to guarantee paid vacation to private employees.

The new legislation would apply to NYC employers with five or more employees and would provide for up to 10 days of paid vacation per year. Employees would be eligible to use vacation time after 120 days of employment.

This benefit would be provided in addition to the five days of paid sick leave to which most New York City employees are already entitled. In other words, eligible employees will have a total of 15 days of paid leave per year, plus any leave taken under the New York Paid Family Leave Law. It should be noted that the costs of providing paid vacation time, like the costs of paid sick time, will likely be borne by employers. This is in contrast to Paid Family Leave, which is paid for via insurance policies funded by payroll withholdings.

Currently, the law in New York City – and throughout the U.S. – is that, absent an express or implied agreement between employer and employee, there is no entitlement to paid vacation time. Many employers voluntarily choose to offer paid vacation to some employees, but employers have always been free to determine the amount, if any, of paid vacation to provide and to whom it should be offered (e.g., only full-time employees, or only employees who have been with the company for at least one year). Generally, employers with paid vacation policies require employees to obtain advance approval of vacation dates; typically, employers reserve the right to reject the proposed dates if the timing is inconvenient.

The new law would replace that discretionary system with mandated benefits. However, according to the Mayor's office, employers will be permitted to require up to two weeks' notice for the use of vacation time and will be able to make "reasonable exceptions" to the granting of leave, such as when too many employees schedule vacation for the same time. The permissible scope of those reasonable exceptions is not yet known. For example, will an employee of an accounting firm be free to schedule a vacation during the crunch time of tax season? Will the new law contain anti-retaliation provisions that leave the accounting firm with no recourse when that happens?

With this proposed legislation coming on the heels of other sweeping changes in employment law in New York State and New York City, including minimum wage increases, Paid Family Leave, and mandatory sexual harassment training, New York City employers may find themselves struggling to keep up with the new demands on their businesses. KD will continue to issue alerts to keep employers apprised of developments as the proposed law proceeds through the legislative process, and our employment attorneys will be available to guide employers through the implementation process if and when the law is enacted.

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