

## Lum, Drasco & Positan LLC

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### **NEW JERSEY DEPARTMENT OF LABOR ISSUES EMERGENCY RULES AND REGULATIONS ON COVID-19 RELATED EMPLOYMENT DISCRIMINATION**

On April 1, 2020, the New Jersey Department of Labor adopted emergency new rules and regulations regarding prohibited COVID-19 related employment discrimination. 52 N.J.R. 4(2), N.J.A.C. 12:70. These regulations prohibit an employer from terminating or otherwise penalizing an employee, “if the employee requests or takes time off from work, based on the written or electronically transmitted recommendation of a medical professional licensed in New Jersey that the employee take that time off for a specified period of time because the employee has, or is likely to have, an infectious disease that may infect others at the employee’s workplace.” Accordingly, leave from work during the public health emergency of the coronavirus disease 2019 (COVID-19) pandemic, for specified COVID-19 related reasons supported by medical documentation, is considered “protected leave”. If an employer terminates or in any way penalizes an employee because such employee requests or takes COVID-19 protected leave, it will be considered prohibited retaliation against the employee. N.J.A.C. 12:70-1.4.

Upon expiration of the period of this COVID-19 protected leave N.J.A.C. 12:70-1.3:

- An employee shall be restored to the position such employee held immediately prior to the commencement of the protected leave, with no reduction in seniority, status, employment benefits, pay, or other terms and conditions of employment.
- If such position has been filled, the employer shall reinstate such employee to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment.
- If, however, during a period of protected leave, the employer experiences a reduction in force or layoff and the employee would have lost the employee’s position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement, where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position.

Employees who believe they have been wrongfully terminated in violation of these regulations on protected COVID-19 related leave may file a complaint with the New Jersey Department of Labor, Division of Wage and Hour Compliance, which shall be processed as a wage claim, for which there may be an additional assessment of an administrative penalty against the employer of \$2,500 for each violation. N.J.A.C. 12:70-1.6

These emergency rules and regulations emphasize the need for employers to take caution and consult with legal counsel before taking an employment action against any employee who has requested leave from work for COVID-19 related reasons supported by medical documentation. We are available to address any employer questions in that regard.

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