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Do NOT Forget Your Record Keeping Obligations!

June 24, 2025

If an employer does not maintain time records, the fact finder, in a wage or overtime dispute, can rely on the employee's statements regarding the number of hours that they worked.

Employers must retain payroll records and timesheets for SIX years, per New Jersey labor law requirements.

You can access the official New Jersey wage and hour record keeping guidelines here.

Additionally, employers are required to maintain records under the New Jersey Earned Sick Leave Law for at least five years. These records must include:

- Employee hours worked
- Sick leave accrued and used
- Sick time advanced, paid out, and carried over

Are Your Payroll and Sick Leave Records Compliant?

If you need assistance understanding your record keeping requirements under NJ labor laws or ensuring compliance with wage and hour laws, contact a member of the Wilentz Employment Law Team.

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EEOC Files Lawsuit Over Violations of the Pregnant Workers Fairness Act

May 27, 2025

Recently the Equal Employment Opportunity Commission ("EEOC") filed a lawsuit against an employer alleging violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), Title I of the Americans with Disabilities Act ("ADA") and the Pregnant Workers Fairness Act ("PWFA"). The PWFA which went into effect in June 2023, is a federal law that requires employers to make reasonable accommodations for an employee's pregnancy related conditions. These accommodations apply to a qualified employee's or applicant's known limitations related to, affected by or arising out of pregnancy, childbirth or related medical conditions, regardless of whether those conditions qualify as a disability, so long as the accommodations do not cause an undue hardship on the covered entity's business operations.

The EEOC alleged that the employer failed to provide pregnancy accommodations in the workplace by subjecting her to an impermissible medical inquiry and treating her less favorably than similarly situated non-pregnant workers. The employee, who was 7 months pregnant at the time, requested a pregnancy-related accommodation as she was no longer able to bend over trailers to assemble and install front plates. Her employer refused to consider her request to either switch positions or for a light-duty assignment and instead immediately placed her on unpaid leave without engaging in any interactive process. The employer also requested she complete an ADA questionnaire designed to elicit information about disabilities. The EEOC has alleged that the employer's actions violate the PWFA.

Is Your Business Compliant with the Pregnant Workers Fairness Act?

The EEOC's decision to take legal action highlights the importance of employers implementing PWFA compliance policies, including distinct processes and forms for receiving and evaluating pregnancy accommodation requests.

If your business needs help reviewing or updating its policies related to pregnant workers' rights, please contact Meghan Chrisner-Keefe or any member of the Wilentz Employment Law Team

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How Are Essential Job Functions Defined by the ADA? What Employers Should Know

May 19, 2025

Most employers know that under the Americans With Disabilities Act ("ADA"), they have a legal duty to provide workplace accommodations to employees with disabilities who can perform the essential job functions of their role, unless doing so would pose undue hardship. But what are essential job functions? They are the basic job duties that an employee must be able to perform (with or without a reasonable accommodation) as part of an employment position.

EEOC Guidance on Defining Essential Job Duties

Guidance from the Equal Employment Opportunity Commission ("EEOC"), the agency that enforces the ADA, suggests that employers review multiple issues in determining whether a job duty is an essential function. The first question an employer should ask is whether the reason the job exists is to perform that function. The function(s) identified by the employer as the reason the job exists are clearly essential functions.

The EEOC considers written job descriptions as evidence of essential functions, but a written job description is not the end of the inquiry into what tasks are essential functions. There may be tasks on an employer's written job description that are never or seldom performed and do not actually constitute essential functions. An employer should review the following factors when considering whether a job duty is an essential function:

- The actual work experience of present or past employees in the position
- The amount of time spent performing a function
- The consequences of not requiring that an employee perform a function

A union employer may also want to review the terms of any collective bargaining agreement in place, which may contain job descriptions or other language that defines the essential functions of a position.

When An Essential Function Is Disputed

An employer may run into difficulty when an employee requesting an accommodation disagrees with the employer's evaluation that a particular job duty is an essential function of the employee's position. Employers must ensure that any identified essential function can withstand scrutiny. The function must actually be performed by employees. More specifically, an essential job function would typically entail more than minimal time and, if not performed, there would be clear consequences to the business. An employer may have a hard time showing that a job duty is an essential function if it is not normally performed as part of the job, little time is spent on the job duty or there are no consequences to the employer if the job duty is not performed.

Are Your Job Descriptions Legally Compliant?

Employers should review job descriptions for ADA compliance to ensure they reflect the essential functions of each role accurately and defensibly.

If you are an employer who needs to determine whether to grant an accommodation requested by an employee or any other employment law, please contact Stephanie Gironda or any member of the Wilentz Employment Law Team.

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Can Employers Be Held Liable For AI Discrimination?

May 13, 2025

Earlier this year, New Jersey's Attorney General and the Division on Civil Rights issued guidance concerning Artificial Intelligence ("AI") discrimination in hiring and employer liability for AI decisions under the New Jersey Law Against Discrimination ("NJLAD"). The guidance is intended to address the risk of bias-based harassment and discrimination resulting from the use of AI.

Automated hiring systems and AI-driven decision-making tools are increasingly used by employers, particularly relative to hiring employees. Using AI tools to automate decision-making processes is reflective of the criteria created and set within an algorithm and can arise from designing, training and deploying the AI tool. When AI hiring tools lead to discriminatory outcomes the NJLAD is applicable and the individuals and/or entities behind the use of the AI tools are subject to exposure for violations, even if it was developed by a third party. This is particularly true considering intent is not a requirement under the law for a finding of disparate impact discrimination (an unintended negative impact on a particular protected class).

Review NJLAD Guidance on AI Discrimination Risks

The new guidance confirms that the NJLAD prohibits algorithmic discrimination and discriminatory outcomes. Accordingly, it is important for New Jersey employers to understand the potential risks associated with using AI in hiring and other employment practices, including claims, lawsuits and administrative actions by the EEOC or DCR.

Need legal counsel on AI discrimination in hiring? Contact Meghan Chrisner-Keefe or any member of the Wilentz Employment Law Team to understand your obligations under the New Jersey Law Against Discrimination and how to protect your business from costly claims.

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Family Medical Leave Act Update: Employers Should Look Beyond the Acronym FMLA to Understand Employee Requests for Leave

April 22, 2025

When an employee knows about the need for leave in advance, it is their responsibility to request leave under the Family and Medical Leave Act ("FMLA") on at least thirty (30) days' notice if it is practical and possible to do so. However, employees often request FMLA leave for reasons that are unplanned and unexpected. In that case, employees do not need to specifically state that they are asking for leave under the FMLA. They only need to provide enough information to their employer so that their employer understands that they are asking for a leave that may qualify for protection under FMLA. In other words, as per FMLA regulations, the employee only needs to provide a "short and plain statement" of the employee's need for leave, and does not need to use any "magic words."

Examples of FMLA Leave Requests That Do Not Use The "Magic Words"

The following are some examples of statements that may be made by employees that may indicate that they are asking for FMLA leave. Although none of the requests specifically mention the FMLA by name, they each are asking for time off for what could be an FMLA qualifying reason.

- "My doctor says I need to take time off for medical reasons."
- "My Mother is ill and I need to take some time to care for her."
- "My child has a medical condition and is going through a tough time now and I need to take time to take care of him."
- "I need some family time off when my child's adoption goes through, so we can bond."
- "I'm adjusting to new medication that I just started and need some days off to get used to it."
- "I have a family emergency."

Employers should remember that an employee does not need to disclose a specific diagnosis to qualify for FMLA leave, just enough information about the reason for leave that the employer can determine whether the reason for the request qualifies the employee for FMLA leave.

TAKEAWAY: Employers should train supervisors to listen for employee leave requests, even when they are not stated in a formal manner. Supervisors should understand that such a request, even if made in passing, is a request for FMLA leave. If you have questions on the FMLA, or any other employment law, please contact Stephanie D. Gironda or any member of the Wilentz Employment Law Team.