



## PHILLIPS LYTLE LLP CLIENT ALERT

### LABOR & EMPLOYMENT



JANUARY 2023

## *New York State Restricts “No-Fault” Attendance Policies*

On November 21, 2022, New York State Governor Kathy Hochul signed into law an amendment to New York State Labor Law (NYSLL) § 215 significantly restricting “no-fault” attendance policies. A no-fault attendance policy is one that assesses points, occurrences or other demerits for absences regardless of reason, and which subjects an employee to discipline or other adverse action when a certain number of points, occurrences or other demerits have been accrued.

As it currently exists, § 215 protects an employee from discrimination and retaliation for making a good faith complaint about a violation of the NYSLL and for exercising certain other rights under the NYSLL. The amendment to § 215, which takes effect on February 19, 2023, expands the conduct protected from discrimination and retaliation to include using “any legally protected absence pursuant to federal, local, or state law” and defines discrimination and retaliation as including “assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action.” The intent of the amendment, as stated in the law’s preamble, is “[t]o ensure that it shall be retaliation for an employer to discipline workers by assessing point[s] or deductions from a timebank when an employee has used any legally protected absence.” Legally protected absences include those under any federal, state or local law that entitle an employee to take time off from work, such as leave under the Family and Medical Leave Act, the New York Paid Family Leave Law and the myriad other federal and New York State leave laws.

Although many leave laws already contain anti-retaliation provisions, some do not. In addition to providing employees protection for taking leave under laws that do not contain their own anti-retaliation provision, the new law will provide employees with an independent state claim for any adverse action their employer takes against them for using leave even under those laws that already prohibit retaliation. Employees who believe they have experienced a violation of the law may file a complaint with the New York State Commissioner of Labor or commence a civil action in court. Violations of the law may result in a fine up to \$20,000, and relief may include liquidated damages, front and back pay, and reinstatement.

Employers should review their attendance policies before the new law takes effect to ensure that employees are not assessed any points, occurrences or other demerits, or experience any other adverse employment action for using legally protected absences.

### **Additional Assistance**

*Our attorneys remain ready to provide advice and guidance on complying with this new law or any other workplace issues. For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■*



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