

New Jersey Enacts Legislation Providing Job Protections To Volunteer Emergency Responders

by **Daniel R. Levy**

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On January 14, 2010, acting Governor Steven M. Sweeney signed into law the New Jersey Emergency Responders Employment Protection Act. The Act prohibits employers from terminating, dismissing or suspending an employee who fails to report for work because he or she is serving as a “volunteer emergency responder” who is either: (1) actively engaged in responding to an emergency alarm; or (2) volunteering as an emergency responder during a state of emergency declared by the President of the United States or the Governor of the State of New Jersey. The Act will take effect on April 1, 2010.

The Act defines “volunteer emergency responder” as, among others, an active member in good standing of a volunteer fire company or a volunteer member of a rescue or ambulance squad or duly incorporated first aid squad, provided that the member’s official duties include responding to a fire or emergency call. The Act requires volunteer emergency responders to take certain actions in order to be afforded the protections of the Act. First, the volunteer emergency responder must provide at least one hour’s notice to his or her employer that he or she is rendering emergency services in response to an emergency alarm or in response to a declared state of emergency. Second, the Act requires that the volunteer emergency responder, upon returning to his or her place of employment, to provide his or her employer with a copy of the incident report and a certification by the incident commander affirming that the volunteer emergency responder was actively engaged in, and necessary for, rendering emergency services. The certification must also set forth the date and time the volunteer emergency responder was relieved from emergency duty.

Employers are not required to pay an employee for any time that the employee misses while serving as a volunteer emergency responder. The employee, however, may charge his absence as a vacation or sick day, provided the employee has such days available. The Act, however, does not provide protection to employees who, by statute or contract, are deemed “essential” employees. Although the term “essential” employee is not defined under the Act, such employees are generally those whose duties are of such a nature as to require the employee to report for work or remain at work to continue the employer’s operations during

an emergency.

Volunteer emergency responders, volunteer rescue squads and fire companies, and New Jersey employers should take certain steps to prepare to comply with the Emergency Responders Employment Protection Act. Volunteer rescue squads and fire companies may desire to alter their Standard Operating Procedures (or Standard Operating Guidelines) to designate appropriate procedures that would allow for the volunteer emergency responder to obtain a copy of the incident report and obtain a certification from the incident commander or crew chief. Officers of volunteer rescue squads and fire companies should remember that, even though not stated in the Act, all protected health information contained within an incident report should be removed before a volunteer emergency responder provides his or her employer with a copy of such report. Even if the regulations regarding protected health information promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") do not apply to a specific volunteer agency, the unauthorized disclosure of confidential patient information by New Jersey Emergency Medical Technicians is prohibited under N.J.A.C. 8:40A-10.2(b)(8).

All New Jersey employers should be prepared to implement appropriate policies to ensure that supervisors do not take adverse employment actions against volunteer emergency responders who miss time from work due to the rendering of emergency services. Paid Emergency Medical Services and paid fire departments, whose employees may also be volunteer emergency responders, should be particularly cognizant of the requirements under the Emergency Responders Employment Protection Act. Volunteer emergency responders who live in New Jersey but are employed outside of the state should be aware that they may not be protected under the Act.

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