

HR TIP OF THE WEEK

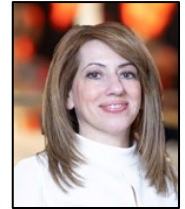
 **TOPIC:** How Safe Is It For An Employer To Separate An Employee Shortly After Taking Statutory Paid Sick?

 **LEGAL DEVELOPMENT:** There's a pending litigation that has piqued my interest. An employee took one statutory, job-protected sick leave day. He claimed that he was too ill to call-out prior to the start of his shift. Forty-eight hours later, the company separated the employee. Some of the issues being litigated include an employee's obligation to call out as soon as possible (what does as soon as possible mean?), as well as the anti-retaliation protections under the paid sick leave law. This case makes me ask, should employers proceed with caution when disciplining employee for taking statutory paid sick leave?

 **HR TIP:** We know that the facts matter. Does your employee have a long history of breaking the rules, or poor performance? Does the sick day trigger FMLA leave or the ADA interactive process? Did HR carefully check the sick leave policy to confirm whether the precise language in the policy was violated? There's also the consistency check - does your company separate all employees for one infraction of the sick day policy? All good questions. But the real take-away here is that there are teeth to the anti-retaliation provisions under statutory paid sick leave. The real question for employers is, if and when the employee challenges the discipline, are there good (documented) answers to these good questions?

ABOUT ME

I partner with HR and legal on complex workplace issues. I've spent my career counseling employers on employment, HR, and compliance issues. I'm a Partner at Genova Burns and Chair of the Human Resources, Law and Compliance Practice Group.



 **Brigitte N. Eagan, Esq.**

973.535.7114

beagan@genovaburns.com

The content of this material is intended for informational purposes only. It is not intended to solicit business or to provide legal advice. Your use of this material does not create an attorney-client relationship between you and Genova Burns LLC or any of the Firm's attorneys.