



New York State's Blood Donation Leave Law

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Employers are occasionally confronted with issues stemming from employees wanting to take time off from work to donate blood. On December 13, 2007, a new provision of New York's Labor Law took effect that governs an employee's request for a leave for that purpose. The following summarizes an employer's obligations and rights under the new statute, which appears at § 202-j of the Labor Law.

Who is covered by the new law?

The statute defines an "employer" as a person or entity, which includes individuals, corporations, partnerships, associations, nonprofit organizations and a group of persons, the state, counties, towns, cities, school districts, public authorities or any other governmental subdivision. An entity, to be considered an employer under the statute, must employ at least 20 or more employees at any site it owns or operates.

What employees are covered by the new law?

Section 202-j covers employees who work an average of 20 or more hours per week. Therefore, some part-time employees will be outside the scope of the statute. The law specifically excludes independent contractors.

How many hours of leave must an employer grant to employees who would like to donate blood?

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who wants to donate blood. The leave may not exceed three hours unless the employer voluntarily agrees to a longer time.

What if business is too busy or the employee is too important to be granted leave?

The law contains no exceptions. All covered employers must provide three hours leave every 12 months to any employee who wants to give blood.

Must an employer pay the employee for the three hours?

The new statute does not state whether the three hours of leave are to be paid or unpaid. It does, however, give the New York State Commissioner of Labor the power to establish any necessary guidelines for the proper implementation of the program, which may address this issue. No regulations have been published at this time. In any event, keep in mind that if a current collective bargaining agreement, policy or practice of an employer permits employees to charge time taken during work hours for the purpose of giving blood to accrued paid leave such as sick, personal or vacation leave, that practice does not change as a result of the new law.

May an employer terminate an employee for taking leave to donate blood?

No. An employer may not fire or in any other way retaliate against an employee for requesting or taking three hours of leave to donate blood.

Are there any posting requirements?

Not currently. It is likely that this subject will be addressed in any regulations established by the New York State Commissioner of Labor.

Are employers required to address blood donation leave in their employee policy handbooks?

No, although employers may wish to add a provision to their handbooks that accurately describes the new statute.

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