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Jury Duty in Federal and New York State Courts - What Employers Need to Know

Employers are confronted regularly with issues stemming from employees missing work to serve as jurors in federal or state court. This newsletter summarizes an employer's obligations and rights under the applicable law.

May an employer penalize or terminate an employee for serving jury duty?

FEDERAL: No. An employer may not "discharge, threaten to discharge, intimidate or coerce any permanent employee by reason of such employee's jury service." 28 U.S.C. § 1875. Unfortunately, neither the statute nor case law clarifies the meaning of "permanent." The Jury Administrator for the United States District Court for the Northern District of New York has indicated that the only type of employer not likely covered by the statute is one who employs an individual on a short term basis through a temporary agency.

NEW YORK: No. As long as the employee gives prior notice of his service, an employer may not terminate or penalize an employee who is absent from employment due to jury duty. N.Y. Judiciary Law § 519.

Is an employer subject to civil penalties for terminating or penalizing an employee for serving jury duty?

FEDERAL: Yes. An employer may be held liable for the employee's lost wages and benefits, ordered to reinstate the employee and enjoined from further violations. An employer may be charged a civil penalty of up to \$1,000 for each violation as to each employee. An employer may be ordered to pay a prevailing employee's court costs, attorneys' fees and expenses and may also be subject to "other appropriate relief" as determined by the court. 28 U.S.C. § 1875(b), (d).

NEW YORK: No. N.Y. Labor Law § 519; *DiBlasi v. Traffix Traffic Network*, 256 A.D.2d 684, 681 N.Y.S.2d 147 (3d Dept. 1998).

Is an employer subject to criminal penalties for terminating or penalizing an employee for serving jury duty?

FEDERAL: No.

NEW YORK: Yes. An employer who discharges or penalizes an employee due to the employee's absence for jury service commits criminal contempt and may be fined up to \$1,000, imprisoned for up to thirty days, or both. N.Y. Judiciary Law §§ 750-751.

Are there protections from frivolous claims by an employee that he or she was terminated or penalized in connection with jury duty?

FEDERAL: Yes. A prevailing employer may be awarded reasonable attorneys' fees where an employee frivolously claims that he or she was terminated or otherwise mistreated in connection with jury duty. 18 U.S.C. § 1875.

NEW YORK: No. Because there is no private cause of action, there can be no frivolous claim. Thus, there is no remedy allowing an employer to recover legal fees or other legal expenses.

Do employers have any affirmative duties in connection with jury duty?

FEDERAL: Yes. Some federal courts have held that an employer has a duty to ensure that employees are aware that they can report for jury duty without fear of reprisal. *Rogers v. Comprehensive Rehab. Assocs., Inc.*, 808 F. Supp. 493 (D. S.C. 1992). Consequently, the best practice is to proactively provide employees with this information.

NEW YORK: The Judiciary Law does not mandate any affirmative duties for an employer, but it is advisable to have in place a policy which sets forth the employer's policy on jury duty leave.

Must employees be paid while serving jury duty?

FEDERAL: It depends. Salaried exempt employees must be paid for financial losses sustained as a result of jury service. *Lucas v. Malack, Inc.*, 851 F.Supp. 225, 228-29 (N.D. W.Va. 1993). However, a salaried exempt employee who performs no work whatsoever during a work week as a result of jury service need not be paid for that week. Also, an employer may deduct the pay received for jury service from any salaried exempt employee. Employees paid on an hourly basis or as salaried non-exempt employees need not be compensated for financial losses sustained as a result of jury duty. A collective bargaining agreement that limits the number of days for which an employee will be paid for jury duty will be enforced where: (1) the limit is explicitly stated in the collective bargaining agreement; (2) the employees are aware of the policy; and (3) the employer does not selectively enforce the policy.

NEW YORK: It depends. A juror is entitled to receive a \$40 jury fee per day of service. Whether this jury fee is paid by New York State or by the employer depends on the day of service and the size of the employer. If an employer has ten or fewer employees, the employer may withhold wages and need not pay the jury fee. If the employer has more than ten employees, then for the first three days of jury service the employer must pay the employee the lesser of the \$40 jury fee or the employee's wage for the day. Beginning on the fourth day of jury service, employers may withhold wages and need not pay the \$40 jury fee. N.Y. Judiciary Law §§ 519, 521. As to a temporary employee, whoever pays the employee is the employer and is subject to all the obligations that apply to any employer. Finally, the same rules apply to part-time and full-time employees.

May an employer require an employee who serves as a juror to make up the time?

FEDERAL: No. *U.S. ex. rel. Madonia v. Coral Springs P'ship, Ltd.*, 731 F. Supp. 1054 (S.D.Fla. 1990).

NEW YORK: No. *Jury Service in New York State: A Guide for Employers and Employees*, 6, available at: <http://www.nyjuror.gov/general-information/employer-employee-information.plp>.

May an employer require an employee to use vacation or other paid leave while serving?

FEDERAL: Yes. Interestingly, when an employer does so, an employee may be excused from jury service in the Northern District of New York. This is because a juror may be excused for any "factor which the court determines to constitute an undue hardship or to create an extreme inconvenience for the juror." 28 U.S.C. 1869(j). The United States District Court for the Northern District of New York takes the position that employees who would be required to use vacation or other paid leave while serving would suffer undue hardship and extreme inconvenience. To be excused, an employee must complete a Juror Information Form explaining the source of his or her hardship or inconvenience. It must be noted that this Northern District of New York policy is subject to change.

NEW YORK: No. However, because an employee may not be receiving full pay, an employee may choose to take paid leave instead of losing wages. An employer must notify its employees, in writing or by public posting, of its policies on sick leave, vacation, personal leave, holidays and hours. N.Y. Labor Law § 195(5). The written notice or public posting should notify employees of their ability to elect paid leave rather than lose wages when they have jury duty.

Does a juror receive proof of his or her attendance to share with his or her employer?

FEDERAL: Yes. Jurors who appear for jury duty are given a "Certificate of Attendance."

NEW YORK: Yes. Jurors who appear for jury duty are given a "Statement of Service Form."

An employer should mandate in any jury duty leave policy it chooses to enact that employees must produce copies of these documents for the employer's records.

Is an employer entitled to notice from an employee in connection with jury duty?

FEDERAL: Yes. An employer is entitled to prior notice of absences due to jury duty. *In re Scott*, 155 F.R.D. 10 (D. Mass. 1994).

NEW YORK: Yes. An employer is entitled to prior notice of absences due to jury duty. N.Y. Judiciary Law § 519.

Can jury duty be rescheduled?

FEDERAL: Yes. However, an employer may not discharge, threaten to discharge, intimidate, or coerce a permanent employee into doing so.

NEW YORK: Yes. The time frame for rescheduling is at the discretion of the Commissioner of Jurors for each individual court throughout the state. Employers may not coerce employees into rescheduling jury duty.

Who can an employer contact for information about jury duty?

FEDERAL: (866) 213-5879

NEW YORK: (800) 695-8767

What if the employer is too busy to grant jury duty leave or the employee is too important to be granted leave?

Neither federal nor state law has any exceptions to granting leave to an employee.

Are there any posting requirements?

Neither federal nor state law has employment poster requirements concerning jury duty.

Are employers required to address jury duty leave in their employee policy handbooks?

No. However, employers may wish to consider adding provisions to their handbooks which accurately describe jury duty leave under federal and state law.

Practical Pointers:

- Make sure managers and supervisors are acquainted with jury duty leave requirements so that they do not inadvertently deny a leave request or retaliate against employees for participating in jury duty.

- Request some type of supporting documentation to ascertain whether the leave is appropriate.

- Employers may wish to insert provisions concerning jury duty into their employee handbooks.

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