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New York State's Blood Donation Leave Law

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 takes 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 twenty 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 twenty 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?

The statute requires an employer to grant three hours of leave in any twelve month period to any covered employee 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 twelve 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.

Overview of New York Civil Rights Law §§ 50-51

Employers need to be aware of a limited right of privacy created by New York Civil Rights Law §§ 50-51. The right is intended to prevent use of an individual's name, likeness or voice for purposes of advertising or trade without the individual's consent.

What constitutes a violation of an individual's right to privacy?

A person, firm or corporation may not use an individual's name, portrait, picture or voice within New York for advertising purposes or for purposes of trade without the prior written consent of the individual.

What constitutes a use for purposes of advertising or trade?

A name, portrait, or picture is used for advertising purposes if it appears in a publication which, taken in its entirety, was distributed for use in, or as part of, an advertisement or solicitation for patronage of a particular product or service. A name, portrait, or picture is used for trade purposes if it attracts customers to the user and/or helps the user make a profit.

Is there an exception for newsworthy events?

Yes. Because of the overriding social interest in the dissemination of news, courts have extended a broad privilege to the news media to use names and pictures in connection with the coverage of newsworthy events and related features. However, a published use will be considered as being for trade purposes rather than a newsworthy event if there is a lack of reasonable connection between the use and a matter of public interest, or if the use contains substantial fictionalization or falsification.

Is there an exception for incidental use?

Yes. The mere incidental or isolated use of a name, picture, or portrait is not actionable.

What form of consent is required for an individual to waive his or her right to privacy?

Consent must be given in writing.

How does the statute apply to minors?

A minor may not consent to waive his or her right to privacy, nor disaffirm a consent given by his or her parent or

guardian. Accordingly, the use of a minor's name, portrait, picture or voice for advertising purposes or for purposes of trade should be done sparingly and only after written consent from the minor's parent or guardian.

Does an employee automatically waive any privacy right if the use is by his or her employer?

No. Written consent is still required for an employer to use an employee's name, likeness, or voice for purposes of advertising or trade. Such consent may, however, be supplied through a collective bargaining agreement.

What are the civil penalties for violating an individual's right to privacy?

Use of an individual's name, portrait, picture or voice in violation of § 51 can be enjoined. If it was done knowingly, the offending party may be liable for compensatory and punitive damages.

Are there criminal penalties for violating an individual's right to privacy?

Yes. Section 50 makes it a misdemeanor to knowingly use an individual's name, portrait, picture or voice for purposes of advertising or trade without prior consent.

Are there any posting requirements?

No.

Are employers required to address this subject in their employee policy handbooks?

No. However, employers may wish to consider adding provisions to their handbook authorizing the use of an employee's name, portrait, picture or voice for purposes of advertising or trade.

Practical Pointers

- Review existing advertising or trade materials to determine compliance with this law.
- Prepare a written authorization allowing the employer to use the name, portrait, picture or voice of current employees. The authorization should permit such use even after the employee's employment has ended.
- Modify applicable employment policies.

HANCOCK & ESTABROOK, LLP
COUNSELORS AT LAW

Labor & Employment Law Practice Group Attorneys:

*Michael J. Sciotti, John T. McCann, Lindsey H. Hazelton, John F. Corcoran, Wendy A. Marsh
Edward J. Smith, III, Laurel E. Baum, Maureen E. Maney & Melinda B. Bowe*

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