



New York State Enacts Military Spouse Leave Law Which Impacts Health Care Providers

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On August 16, 2006, New York state enacted a new leave law which has been made part of the New York State Labor Law. Specifically, the new law adds a new section, § 202-i, which addresses unpaid leaves of absences for spouses of certain military personnel. The new law has immediate implications on covered employers, as this law was made effective the day the governor signed it into law.

What “employers” are covered? The law does not cover all employers. Rather, it only covers those employers that employ 20 “or more employees at least one site.” The term “employer” includes individuals, corporations, counties, towns, cities, school districts, public authorities and all other governmental subdivisions no matter of what type. Given this broad definition, it will cover hospitals and many physician offices.

Who is a covered “employee”? Assuming you are a covered employer, not every employee will be covered. The Act defines an employee as a “person who performs service for hire for an employer, for an average of 20 or more hours per week.” It includes “all individuals employed at any site owned or operated by the employer.” As with other labor and employment laws, all independent contractors are excluded.

What are the requirements for the spouse? A covered employee must have a spouse who is “a member of the armed forces of the United States, National Guard or Reserves, who has been deployed during a period of military conflict to a combat theater or combat zone of operations” and that person must be on leave “from the armed forces of the United States, National Guard or Reserves while deployed during a period of military conflict to a combat theater or combat zone of operations.”

What is a “period of military conflict”? The term military conflict means “a period of war declared by the United States Congress, or in which a member of a reserve component of the armed services is ordered

to active duty” pursuant to various provisions of federal law (i.e., 10 U.S.C. §§ 12301 and 12302).

What leave is the employee entitled to? The employee is entitled “up to 10 days unpaid leave by their employer.”

What notice must an employee give their employer? Unfortunately, the new law does not provide for any advance notice provision to the employer.

What if the employer is too busy to grant the leave or the employee is too important to be granted the leave? The new law does not have any exceptions to granting the leave to an employee who has met all the requirements.

How does the new law protect employees? The new law contains an anti-retaliation provision which prohibits employers from retaliating “against an employee for requesting or obtaining a leave of absence.” The new law is silent as to what damages an aggrieved employee could obtain from an employer.

Can an employer grant additional leave to applicable employees? Yes. As with most other labor and employment laws, the new law does not “prevent an employer from providing leave for military spouses” beyond which is required by this new law.

Does the new law take away an employee’s ability to use other leave to which they may be entitled? No. The new law has no impact on “an employee’s rights with respect to any other employee benefit provided by law.”

Does the new law have any posting requirements? No.

Does the new law require that employers modify their employee handbook in any manner? No. However, employers may wish to consider adding a provision to the handbook which accurately describes the new law. Employers may want to request “as much notice as possible” of the leave for scheduling

purposes. However, employers must realize that employees do not have to give notice of their intent to use this leave, and the failure to give notice cannot be a basis for denying the leave.

Does the new law prohibit employers from asking for supporting documentation to substantiate the leave request? The new law does not prohibit an employer from asking for documentation from an employee to support their leave request. It may be advisable to alert employees to this fact by addressing it in your employee handbook. For example, you could tell employees: “The company reserves the right to ask for documentation to substantiate the leave request.”

Practical Pointers:

- Make sure managers and supervisors are acquainted with this new law so that they do not inadvertently deny a leave request or retaliate against employees for exercising their rights under this new law, as the law has no exceptions to granting leave and no notice requirements.
- Request some type of supporting documentation to ascertain whether the leave is appropriate.
- Employers may wish to insert provisions concerning this new leave law into their employee handbooks.

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