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JULY 2008

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East Coast Edition

A Littler Mendelson East Coast-specific Newsletter

New Notice Requirements in New York for Blood Donation Leave and for Nursing Mothers to Express Milk in the Workplace

By Gregory B. Reilly and Lisa R. Norman

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Blood Donation Leave – Notice Requirements

Starting July 8, 2008, the new blood donation guidelines require that covered New York employers notify all employees in writing about their right to take leave to donate blood.

New York's blood donation leave law (enacted last year) covers all public and private New York employers with 20 or more employees at one or more worksites. Covered employers must provide employees with no fewer than three hours of unpaid leave time within any 12-month period to donate blood.

The newly effective written-notice requirement provides that covered employers may provide notice of employee rights under the law through posting a notice, providing a written statement in an employee's paycheck or other mailing, or including the notice in an employee handbook. New employees should be notified at the time of hire, and all employees should be notified on an annual basis by no later than January 15.

Under the guidelines, New York employers may require employees, depending upon the circumstances, to give reasonable notice of at least two to three working days prior to taking leave for blood donation. Further, employers

may require employees donating blood away from the employer's place of business to present proof of their blood donation.

The guidelines provide that blood donation leave shall be paid if the donation occurs in connection with a blood drive at the employer's place of business or scheduled by the employer for another convenient time and place. The leave may be unpaid if the donation occurs at a blood drive away from the employer's premises or not otherwise sponsored by the employer. Employers should note that under federal regulations, if an employee is exempt from overtime, the leave must be paid in order to retain the employee's exempt status.

In addition to notice requirements, the guidelines also state that employers are not prohibited from establishing practices or policies in support of blood donation or from making terms and conditions of blood donation leave a matter of collective bargaining.

Right of Nursing Mothers to Express Breast Milk – Notice Requirements

New 2008 guidelines issued by the New York Department of Labor require employers to provide employees with written notification of New York's 2007 law providing rights to employees to express breast milk following the birth of a child. Under the 2007 law, all New York employers, regardless of size, must provide breastfeeding employees with reasonable unpaid break time or paid break or meal time to express breast milk for their nursing child, for up to three years after the birth of the child. Employers may provide notice to

employees individually or through publication, such as posting a notice or including a provision in an employee handbook. Further, employees are required to give their employers advance notice of their intent to use break time to express breast milk.

The guidelines also set forth the following requirements:

- Reasonable Unpaid Break Time – At least once every three hours nursing mothers shall be permitted to take unpaid break time of no less than 20 minutes to express breast milk or 30 minutes if they are not in close proximity to an area designated for the expression of breast milk. Employers may, however, require employees to postpone (for no more than 30 minutes) the break period when they are permitted to express breast milk until appropriate coverage is available to fill in for the employee.
- Reasonable Efforts, Privacy and Close Proximity - Employers must make reasonable efforts to provide a private area or room, other than a restroom, for breastfeeding employees to express milk – unless it is significantly impracticable, inconvenient or expensive for the employer to do so. Further, the area or room provided for the expression of breast milk must be in close proximity to the employee's work area.
- Discrimination Prohibited – Employers are prohibited from discriminating or permitting a work environment that is hostile towards breastfeeding employees electing to express breast milk in the workplace.

The guidelines also suggest activities which may be implemented to meet the needs of breastfeeding employees in the workplace, such as providing educational information on breastfeeding in the lactation room or area, or designating a breastfeeding coordinator to manage the implementation of the law in the workplace.

The new guidelines for both laws impose immediate notice requirements upon covered New York employers. Employers should seek the advice of counsel in implementing new policies or practices to ensure compliance with the guidelines.

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