



June 2009

### **LEGAL ALERT: EMPLOYEE BLOOD DONATION LEAVE**

New York State Labor Law Section 202-j requires employers with 20 or more employees at at least one site to allow employees who perform services for hire for an average of twenty or more hours per week, breaks to donate blood. The New York State Department of Labor released guidelines to help such employers interpret this law on May 7, 2008.

#### ***Who is covered by this law?***

##### Employer:

- a person or entity that employs twenty or more employees at at least one site
- includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, public authority or other governmental subdivision of any kind.

##### Employee:

- a person who works for an average of twenty or more hours per week, but not an independent contractor
- includes all individuals employed at any site owned or operated by an employer

#### ***What does the statute require?***

An employer is required to grant employees one of the following leaves each calendar year:

1. **Off-Premises Donation:** up to 3 hours of unpaid leave to donate blood (any additional time should be agreed to by the employer) and must comply with the guidelines; OR
2. **Donation Leave Alternative:** paid leave to donate blood during work hours at least two times a year at a convenient time and place set by the employer, including a blood drive at the employee's place of employment.

An employer shall not retaliate against an employee for requesting or obtaining a leave of absence under this section.

#### ***What do the guidelines say?***

##### Notice Requirements (applies to both types of leave)

- **Employers:** Employers must give the employees notice of this right in writing (via prominently posted signs, mailing, paycheck inserts or a handbook provision) within 60 days after issuance of these guidelines (July 6, 2008) and on an annual basis thereafter, no later than January 15th.
- **Employees:**
  - ❖ Employees may be required to give three days' notice for off-premises blood donation and two days' notice for a blood donation leave alternative.

- ❖ A shorter notice period must be allowed for employee emergencies requiring that he/she donate blood for his/her own surgery or that of a family member.
- ❖ If the employee fills an essential position such that three days' notice is insufficient to find a substitute, the employer may require up to ten working days' notice.

Off-Premises Donation:

- Employers are required to permit employees one 3 hour unpaid leave per calendar year during the employee's regular work schedule.
- Employers are not required to allow unused leave time to accrue and carry over.
- Employers may require employees to show proof of blood donation.

Donation leave alternative:

- **Options:**
  - ❖ Blood drive at the employee's place of employment; or
  - ❖ Blood donation option at some other convenient time and place set by the employer. This means that the option should be within the employee's regularly scheduled work hours and close to their place of employment.
- **Length of time/Frequency:** Employees should be allowed a sufficient period of time to donate blood and recover from such donation (including eating a snack). Such leave shall be available twice a calendar year, at least sixty days apart.
- **Paid:** Donation leave alternatives must be paid without the use of vacation, personal, sick or other already existing leave. Leave for donation leave alternatives should be granted in addition to other paid time off, such as vacation.
- **Employee inability to participate:** If an employee provides prompt notice of his/her inability to participate because he/she was on leave (sick, vacation), which results in the employer not providing the employee with at least two blood leave alternatives during working hours in a calendar year, the employer must either (i) make available another such alternative or (ii) allow the employee to take leave for an off-premises donation.
- **Shared Work Location:** Two or more employers may coordinate or co-sponsor a blood drive at a shared work location.
- **Notice:** Employers must post notice of such blood donation leave alternative before December 1 in order to count toward that calendar year and should be prominently posted in the workplace at least two weeks in advance.

Additional leave: Employers can use their discretion to establish policies and procedures supporting more frequent blood donation (i.e. paid leave, additional blood donation leave, shorter notice periods, more generous leave periods for donation in preparation for surgery on the employee or employee's family member). Employers are not precluded from providing leave for blood donation in addition to leave allowed under any other provision of law.

*This alert is meant to provide general information only, not legal advice. For additional information, please contact Judith Moldover at Lawyers Alliance for New York at 212-219-1800 ext.250.*