

New York Enacts the Military Spouse Leave Act

New York has become the first state to require employers¹ to grant unpaid leave to employees² that are spouses of service members, including members of the United States armed forces, national guard or reserves who have been deployed during a period of military conflict³ to a combat zone. Section 202-i of the Labor Law (the "Act") mandates that employers must grant the spouse ten (10) days unpaid leave when the spouse serving in the military is on leave. An employer may not retaliate against an employee for requesting a leave of absence under the Act.

Where the Act can be found: NY Labor § 202-i.

When the Act became effective: The amendment is effective retroactive to August 16, 2006, the date Labor Law § 202-i was originally enacted.

Practice Guidelines: Employers must grant an employee's request for unpaid leave of absence if he or she: (i) works an average of twenty or more hours per week, regardless of length of employment; and (ii) has a spouse serving in the military who is on leave. An employer may not refuse a leave of absence due to potential adverse effects resulting from the leave. Employees are not required to give advance notice of their intention to take leave under the Act. An employee's vacation days will be unaffected by the decision to take unpaid leave.

The Act only applies to spouses, rather than family members or significant others of military personnel. However, employers offering domestic partner benefits to their employees should consider whether to allow domestic partners of service members to also receive unpaid leave under the Act. Additionally, employers should consider including information regarding the Act in their personnel handbook and/or policy manuals.

This alert is meant to provide general information only, not legal advice. Please contact Angela Cheng at Lawyers Alliance for New York at (212) 219-1800 x 278 or visit our website www.lawyersalliance.org for further information.

¹ Employer means a person or entity that employs twenty or more employees in at least one location and includes an individual, corporation, the state, county, town, city, school district, public authority or other governmental subdivision of any kind.

² Employee means a person who performs service for hire for an employer for an average of twenty or more hours per week but does not include an independent contractor.

³ Period of 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 forces is ordered to active duty.

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