

management matters

A Roundup of New York's Employment-Related Statutes: Part 2

By Jonathan A. Wexler, Esq.

Editor's Note: This article is the second in a two-part series on certain New York laws that provide protection to employees and impose obligations on employers.

Whistleblower Protection

An employer shall not take any adverse employment action against an employee because that employee 1) discloses or threatens to disclose an activity, practice, or procedure of the employer which violates any law, rule, or ordinance and which presents a "substantial and specific" threat to the public health and safety; 2) provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into such a violation; or 3) objects to or refuses to participate in such a violation.

In order to be protected by the whistleblower statute, the employee must, before complaining to the public body in question, notify the employer of the violation and give the employer a reasonable opportunity to correct the violation.

Nondiscrimination for Legal Activities

It is unlawful for an employer to discriminate against an applicant or employee for engaging in any of the following activities outside the workplace, during nonworking times, and without the use of the employer's property:

- 1) running for public office, campaigning for public office, or fund-raising for public office;
- 2) participating in legal recreational activities, including but not limited to sports, games, hobbies, exercise, reading, or watching television, movies, or other material; or
- 3) legally using consumable products.

Lie Detector Tests

An employer shall not use, recommend, suggest the use of, or knowingly permit any employee to undergo a lie detector test (psychological stress evaluation examination) or utilize the results of such a test.

Bone Marrow Leave Law

An employer must grant leave of

absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The combined length of the leaves, determined by the physician performing the procedure, shall not exceed 24 work hours unless agreed to by the employer. The statute prohibits retaliation against an employee for requesting or obtaining such leave of absence.

Adoptive Parents' Child Care Leave

An employer that permits an employee to take a leave of absence upon the birth of the employee's child must permit an adoptive parent to take the same leave upon the same terms following the commencement of the parent-child relationship (when the child is placed in the adoptive home). Leave is not provided for adoptive parents of children ages five or older, though an exception is made for hard-to-place or disabled children under age 18.

Time Allowed for Lunch

Nonfactory employees in New York must be allowed at least 30 minutes for lunch during the period lasting from 11

a.m. to 2 p.m. Any employee who works a six or more hour shift that extends over the 11 a.m. to 2 p.m. period is entitled to at least 30 minutes off within that period.

Time Allowed for Dinner

Any employee that begins work before 11 a.m. and continues later than 7 p.m. shall be allowed an additional meal period of at least 20 minutes between 5 and 7 p.m.

Meals for Irregular Working Hours

Any employee who works for a period of six or more hours between 1 p.m. and 6 a.m. is entitled to at least 45 minutes off midway between the beginning and end of employment. ▀

Jonathan A. Wexler is an attorney in the New York office of Vedder Price Kaufman & Kammholz, where he practices labor and employment law.