

Labor Law Bulletin

New Employee Notice Requirements for New York Employers

As reported in previous Vedder Price Labor Law Bulletins, New York amended its Labor Law last year to require employers to provide leave time for employees who wish to donate blood and to accommodate employees who need to express milk during the work day. New guidelines issued by the state Commissioner of Labor now require affected employers to give employees notice of their rights under these laws, and also limit the amount of notice an employee must give of an intention to exercise his or her right to take time off for these purposes.

Notice Requirements Regarding Employee Blood Donation

Last year's Labor Law amendments require both public and private New York employers with twenty or more employees to (1) provide employees with no less than three hours of unpaid time off within which to donate blood during any twelve-month period; and (2) pay for time off for on-site blood donations or off-site donations scheduled by

the employer. The employer may not require the employee to use accumulated vacation, personal, sick or other already existing leave time, but may require proof that blood donation was made or attempted in good faith.

Notice to Employees: The new guidelines require employers to notify employees in writing of their right to take blood donation leave. Notice *must be made in a manner that will ensure that employees see it*, such as by (1) posting prominently in an area where employees gather; (2) including the notice with employee paychecks; (3) mailing; or (4) including notice in employee handbooks. Notices must also be updated as necessary. If the employer provides written notice directly to employees, it must do so at the time of hire of all new employees and must give the notice to all employees on an annual basis, no later than the fifteenth of January of each year. We believe that the posting or handbook options are the most practical for most employers. A sample notice is attached to this Bulletin.

Notice to Employer: The employer may require employees to give reasonable notice of their intended use of leave time in order to donate blood. The guidelines define reasonable notice with respect to off-premises blood donation as consisting of notice given three working days prior to the day on which leave will be taken. They define reasonable notice with respect to blood drives at the place of employment or blood donation at some other time and place set by the employer as notice given two days prior to the day on which leave will be taken.

Where the employee fills a position essential to the operation of the employer or a position necessary for compliance with legal requirements, and three working days' notice is insufficient to allow the employer to cover for the employee, the employer may require up to ten working days' notice.

Emergency Donations: In the event that an employee has an emergency requiring blood donation for the employee's own surgery or that of a family

member, employers must provide reasonable accommodations for a shorter notice period.

Notice Requirements Regarding Rights of Nursing Mothers

The Labor Law amendments also require all public and private New York employers, *regardless of their size*, to provide reasonable unpaid break time—at least once every three hours, depending on need, for 20 to 30 minutes, depending on proximity of location—or to permit an employee to use paid break time or meal time each day to allow her to express breast milk for her nursing child for up to three years following the child's birth. The employer must make reasonable efforts to provide a room or other location in close proximity to the work area, where an employee can do so in privacy. No employer may discriminate in any way against an employee who chooses to express breast milk in the workplace.

Notice to Employees: The new guidelines require written notification of these rights to employees who are returning to work following the birth of a child. Such notice may either be provided individually to affected employees or to all employees through publication in the employee handbook or posting in a central location.

Notice to Employer: An employee wishing to avail herself of this benefit must provide her employer with

advance notice. Such notice shall preferably be provided to the employer prior to the employee's return to work following the birth of the child, in order to allow the employer an opportunity to establish a location and to schedule time off if multiple employees need time off for this purpose.

"Reasonable Efforts": The employer's duty to make "reasonable efforts" to provide a room or other private location for the expression of breast milk is extensively discussed in the guidelines: the employer must provide such a location as long as doing so is neither "significantly impracticable, inconvenient or expensive," with a list of factors to be weighed in making that determination. The location may *not* be a restroom or toilet stall.

If you have any questions about the new guidelines, the previously enacted laws, or about New York employment law in general, please contact Alan Koral (212-407-7750), Neal Korval (212-407-778), Jonathan Wexler (212-407-7732), Daniel Green (212-407-7735), or any other Vedder Price attorney with whom you have worked. We would be happy to help you in drafting employee notices or reviewing your existing policies to determine whether they are in compliance with the law and administrative regulations. ■

Notice Regarding Rights of Employees Donating Blood

You are entitled to no less than three hours of unpaid leave time within which to donate blood during any twelve-month period. Leave taken for on-site blood donations or off-site donations scheduled by **[company name]** will be paid and **[company name]** will not require you to use accumulated vacation, personal, sick or other already existing leave time. **[company name]** may require you to show proof of your blood donation in the form of a notice of blood donation (or of a good-faith effort at blood donation) from the blood bank, or some other documentation sufficient to the purpose.

You must provide reasonable notice of your intended use of leave time to donate blood. If you intend to donate blood off-site, you must provide **[company name]** with notice of your need for leave at least three working days prior to the day on which the leave will be taken. If you intend to participate in a blood drive taking place on-site or at some other time and place set by **[company name]** you must provide **[company name]** with notice of your need for leave at least two days prior to the day on which the leave will be taken.

If your position is deemed essential to **[company name]**'s operations or to its compliance with legal requirements, and three working days' notice is insufficient to allow for your position to be filled during your absence, **[company name]** may require that you provide notice of up to ten days, but no longer than is necessary to temporarily fill your position.

In the event that you experience an emergency requiring that you donate blood for your own surgery or that of a family member, **[company name]** will seek to provide reasonable accommodations for a shorter notice period.

Future Seminars and Webinars

Tonkin's Employment Law: Termination 2008

September 16, 2008

Alan M. Koral, a shareholder with Vedder Price and head of the firm's Labor and Employment Practice Group in New York, is among the leading industry experts who will present at Tonkin's Employment Law: Termination 2008. Mr. Koral's presentation is titled "Selecting the employees to terminate by deciding who will stay and who will go," and will cover the following topics:

- Alleviating the burden of the appearance of a targeted selection process by setting up a master criteria plan

- Avoiding a potential lawsuit by understanding the right and wrong reasons to lay off an individual

- Eliminating potential claims of discrimination by generating a proactive and progressive plan to decide who will be dismissed

- Planning a performance evaluation system by which termination clarity is evident

To find out more and to register please visit www.TonkinCorporation.com

VEDDERPRICE®

222 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
312-609-7500 FAX: 312-609-5005

1633 BROADWAY, 47th FLOOR
NEW YORK, NEW YORK 10019
212-407-7700 FAX: 212-407-7799

875 15th STREET NW, SUITE 725
WASHINGTON, D.C. 20005
202-312-3320 FAX: 202-312-3322

WWW.VEDDERPRICE.COM

About Vedder Price

Vedder Price P.C. is a national business-oriented law firm with over 260 attorneys in Chicago, New York and Washington, D.C. The firm combines broad, diversified legal experience with particular strengths in labor and employment law and litigation, employee benefits and executive compensation law, occupational safety and health, general litigation, corporate and business law, commercial finance, financial institutions, environmental law, securities, investment management, tax, real estate, intellectual property, estate planning and administration, health care, trade and professional association and not-for-profit law.

© 2008 Vedder Price P.C. The *Labor Law Bulletin* is intended to keep our clients and interested parties generally informed on labor law issues and developments. It is not a substitute for professional advice. For purposes of the New York State Bar Rules,

this bulletin may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome. Reproduction is permissible with credit to Vedder Price P.C. For additional copies or an electronic copy of this bulletin, please contact us at info@vedderprice.com.

Questions or comments concerning the bulletin or its contents may be directed to the firm's Labor Practice Leader, Bruce R. Alper (312-609-7890), or the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780) or, in Washington, D.C., Theresa M. Peyton (202-312-3360).