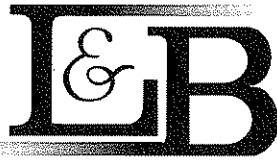


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**LAMB & BARNOSKY, LLP**

ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR PUBLIC SECTOR CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**RE: COMPTROLLER'S INTRODUCTION OF PROPOSED REGULATIONS  
REGARDING EMPLOYER REPORTING OF TIME WORKED BY  
ELECTED AND APPOINTED OFFICIALS AND CREATION OF  
RETIREMENT COMPLIANCE UNIT**

**DATE: OCTOBER 28, 2008**

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Comptroller Thomas P. DiNapoli has announced: (1) the introduction of proposed regulations regarding employer reporting of time worked by elected and appointed officials; and (2) the creation of a Retirement Compliance Unit to review and enforce the eligibility requirements for the New York State and Local Retirement System. This memorandum briefly summarizes your obligations pursuant to the proposed regulations, if and when they are adopted, and sets forth the purpose for and the responsibilities of the new Unit.

### **Proposed Regulations (2 NYCRR § 315.4)**

If adopted, these regulations will require the governing boards of participating employers to adopt, post and file certain resolutions with the Comptroller.

#### **(1) Standard Work Day Resolution (2 NYCRR § 315.4(1))**

Each governing board will be required to pass a resolution setting forth the number of hours in a standard work day for each elective or appointive office (“[f]or the purpose of determining service credit, in no event shall less than six hours be considered to be a full day of work”) and the expiration of the term of each office (§ 315.4(1)). The resolution

must be passed either at each re-organization meeting held on or after January 1, 2009 or whenever a new elective or appointive office is established.

(2) Record of Activities and Reporting Resolution (2 NYCRR § 315.4(2)-(3))

If an employer does not maintain a record of time worked on a daily basis for an elected or appointed officer, the official holding the office will be required to maintain a record of his or her work activities for a period of three months (§ 315.4(2)). This record must be submitted to the employer's governing board and the secretary or clerk of the board will be required to file a certification with the Comptroller, on a form to be developed by the Comptroller's Office, certifying that the log has been received. Thereafter, at the first regular meeting held after the elected or appointed officer submits his or her record of activities, the board will be required to "authorize, by resolution, the maximum total number of days per month based upon the standard work day and the record of activities that will be reported for the elected or appointed official" (§ 315.4(3)).

The required resolutions will have to be posted on the employer's website for a minimum of 30 days or, if no website is maintained, on the official sign board or at the main entrance to the office of the clerk of the municipality. A certified copy of the resolution and an affidavit of posting will have to be filed with the Comptroller within 45 days of the meeting.

The failure of a board to adopt, post and file the required resolutions may result in either no service credit or the suspension of service crediting and retirement system membership benefits.

As noted, these regulations have only been proposed by the Comptroller. The full text of these regulations can be viewed on the Comptroller's website at [http://www.osc.state.ny.us/pension/new\\_reg.pdf](http://www.osc.state.ny.us/pension/new_reg.pdf). The period for public comment on the proposed regulations closes on November 29, 2008. If and when the regulations are adopted, we will provide an update regarding your specific obligations and any time frames for compliance.

**Retirement Compliance Unit**

In addition, the Comptroller created the Retirement Compliance Unit to correct alleged abuses of the Retirement System. According to a September 25, 2008 press release from the Comptroller's Office, the Unit will work with other divisions of the Comptroller's office to:

- identify and prevent attempts to improperly gain retirement benefits;
- implement new regulations for reporting time of elected and appointed officials;
- strengthen auditing of employers reporting to the Retirement System;
- continue to scrutinize the employment status of lawyers and other professionals in the Retirement System; and
- enforce regulations on membership eligibility in the Retirement System.

We will monitor the development of and actions taken by the Unit and will provide you with pertinent updates regarding your legal obligations with respect to dealings with the Unit.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.