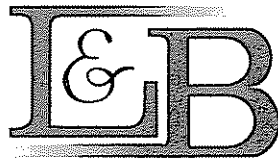


Keeping you
informed...



LAMB & BARNOSKY, LLP

ATTORNEYS AT LAW

MEMORANDUM

TO: OUR EMPLOYER CLIENTS

FROM: LAMB & BARNOSKY, LLP

**RE: GUIDELINES REGARDING IMPLEMENTATION OF BLOOD DONATION
LEAVE REQUIREMENT**

DATE: JUNE 27, 2008

Last November, we sent you a Memorandum entitled “New Legislation Regarding Leaves of Absence for Blood Donations and Nursing Mothers” to inform you about a new law which required certain employers to grant three hours of leave in any 12-month period to an employee for the purpose of blood donation. The New York State Department of Labor recently issued guidelines addressing implementation of this law. The following is a brief synopsis of these guidelines.

Covered employers¹ must allow covered employees² one three-hour leave per year for blood donation at a location off of the employer’s premises. Employers are not required to pay employees for this three-hour period. Any leave time beyond three hours is subject to all other rules and guidelines governing leave established by the employer including an applicable collective bargaining agreement. Please note that the guidelines specify, for the first time, that this leave need not be paid. This modifies our previous opinion, provided after consultation with agency personnel in Albany, that the leave was required to be with pay.

Employers may also offer “blood donation leave alternatives” instead of or in addition to off-premises donation leave. A “blood donation leave alternative” can be either a blood drive at the employer’s place of employment or a drive at some other convenient time and place set by the employer. It must be offered twice a year at least 60 days apart. This type of leave, unlike leave for off-premises donation, must be paid, offered without the use of existing leave accruals (e.g. vacation or sick days), offered during an employee’s regular work hours, and not require

¹ Covered employers are those which employ 20 or more employees in at least one site and include individuals, corporations, partnerships, associations, nonprofit organizations, groups of persons, the State, counties, towns, cities, school districts, public authorities and other governmental subdivisions of any kind.

² Covered employees are those who perform “services for hire for an employer, for an average of 20 or more hours per week,” who are not independent contractors.

employees to travel unreasonable distances. Employees donating at a leave alternative must be provided with sufficient time to both donate blood and recover. Notice of an upcoming blood donation leave alternative must be prominently posted in the workplace at least two weeks in advance.

The guidelines also set forth notice and recordkeeping requirements. Employers must notify employees in writing of their right to take blood donation leave. This can be accomplished by posting a notice in a prominent location, mailings to employees, inclusion of notice with employees' paychecks or other comparable method. A sample notice is attached. This notice must be provided by no later than July 6, 2008. Employers may continue to require employees to give reasonable notice of their intended use of blood donation leave time and to show proof of their blood donation.

The guidelines can be accessed in their entirety at:

<http://www.labor.state.ny.us/workerprotection/laborstandards/PDFs/Blood%20guidelinesFINAL.pdf>.

If you have any questions about these guidelines or about the law itself, please do not hesitate to contact us.

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.

NOTICE OF BLOOD DONATION LEAVE

The New York State Department of Labor has recently issued guidelines concerning the rights of employees to leave from work for the purpose of donating blood. Please take notice of the following:

I. Off-Premises Blood Donation

- Employees may have one three-hour leave per year to donate blood at a location off of their employer's premises.
- This shall be without pay.
- Employees must provide reasonable advance notice to the employer before taking this leave.
- Leave time beyond three hours is subject to all other rules and guidelines governing leave established by the employer or applicable collective bargaining agreements.

OR

II. Blood Donation Leave Alternatives

- Employers may offer a blood donation option to their employees that occurs either on the site of the employer, or at another convenient time and place set by the employer.
- It must be offered twice a year, at least 60 days apart.
- Employers must provide employees with enough time to donate blood *and* to recover.
- This shall be with pay.

Should you choose to donate blood, you must show your employer proof that you donated.

If you have any further questions, please contact your supervisor.