

NEW STATE LAW REQUIRES EMPLOYERS TO PROVIDE LEAVES OF ABSENCE FOR MILITARY SPOUSES

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On August 16, 2006, a new state law went into effect (which has been codified as Section 202-i of the New York Labor Law) that requires certain employers to provide employees who are married to members of the armed forces with up to ten days of unpaid leave upon request. The purpose of the law is to enable employees who are married to members of the armed forces to spend some time with their spouses while the spouses are on leave from the armed forces during a period of military conflict. This information memo describes the coverage of the law, the circumstances under which an eligible employee is entitled to leave, and the obligations of covered employers pursuant to the law.

The law applies to all persons or entities in New York that employ 20 or more employees in at least one site within the state, including individuals, corporations, counties, towns, cities, school districts, public authorities, or other governmental entities of any kind. Accordingly, all public and private employers that have 20 or more employees in at least one site are covered by the law. Under the law, the term "employee" includes a person who performs service for hire for a covered employer for an average of 20 or more hours per week, but does not include individuals who are classified as independent contractors. All employees of a covered employer -- whether or not they work at a site that has 20 or more employees -- are eligible to obtain leave pursuant to the law if they qualify for such leave.

For an employee to qualify for leave under the law, the employee must be married to a member of the armed forces of the United States, national guard, or reserves who has been deployed during a period of military conflict to a combat theater or combat zone of operations. A "period of military conflict" is defined in the law to mean 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. The leave may only be used when the employee's spouse is on leave from the armed forces during a period of military conflict.

The law prohibits employers from retaliating against any employee who requests or obtains a leave of absence pursuant to the law. The law does not prevent an employer from providing leave for military spouses in addition to the leave allowed under any other provision of law. In addition, the law does not affect an employee's rights with respect to any other employee benefit provided by law.

John M. Bagyi counsels and represents employers in a variety of labor and employment related contexts and is a Member in Bond, Schoeneck & King's Albany office. If you have a question you would like to submit, you are encouraged to do so by email (jbagyi@bsk.com), phone (518-533-3229) or fax (518-533-3299).