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Governor Signs Illinois Family Military Leave Act, Blood Donation Leave Act, and Revisions to Voting Leave

In a June 8, 2005 Management Alert, we reported on several newly passed laws and bills awaiting the Governor's signature in Illinois that will impact Illinois employers. All three leave laws mentioned in the alert have now been signed by Governor Blagojevich. By far, the most discussed new leave provision may be one of the first ever passed by any state: the Illinois Family Military Leave Act.

Illinois Family Military Leave Act (P.A. 94-0589)

The Illinois Family Military Leave Act became effective August 15, 2005. It applies to employees and *independent contractors* who have worked at least 12 months for the employer and have worked at least 1,250 hours in the 12 months preceding the commencement of the leave. Under the new law, "Family Military Leave" means leave requested by an employee or independent contractor who is the spouse or parent of a person called by order of the Governor or President to state or federal military service lasting longer than 30 days. Employers are required to provide unpaid family military leave to the spouse or parent of a person deployed for military service while the deployment orders are in effect, according to the following schedule:

Number of Employees/Independent Contractors Performing Work for the Employer	Number of Days Unpaid Military Family Leave
15-50	Up to 15 days
More than 50	Up to 30 days

An employee or independent contractor must give at least 14 days notice prior to the date the leave will commence if the

leave will consist of five or more consecutive work days, or as much notice as is practicable if the leave is for less than five consecutive days. Where possible, the employee or independent contractor should consult with the employer to minimize disruption to the employer's operations. The employer may require certification from the proper military authority to verify the employee or independent contractor's eligibility for the leave.

The employee or independent contractor is not entitled to leave under this law unless s/he has first exhausted all accrued vacation, personal, compensatory and all other leaves (except sick and/or disability leave). In other words, unlike the Family and Medical Leave Act, Family Military Leave may not run concurrently with an employer's paid leave programs. The employee or independent contractor is entitled to be restored to the same or an equivalent position following the leave, unless such restoration is inappropriate for reasons unrelated to the leave. Employers must allow for employees (and independent contractors, if appropriate) to maintain benefits at the employee's expense for the duration of the leave, and may negotiate maintenance of benefits at the employer's expense. State courts have jurisdiction to enjoin unlawful practices and/or retaliatory actions that violate the Act, and may order equitable relief "necessary and appropriate" to redress such violations.

Employee Blood Donation Leave Act (P.A. 94-0033)

While the Family Military Leave Act may attract more interest from the media, the Employee Blood Donation Leave Act (EBDLA), which is to take effect January 1, 2006, may end up having a larger long-term impact on employers given that it provides for paid leave. The EBDLA applies to any unit of local government, board of election commissioners, or any private employer in the State who has 51 or more employees. Unlike under the Family Military Leave Act, "employee" for purposes of determining whether a private employer is covered under the EBDLA is not defined.

Upon request, a full-time employee who has been employed by a covered employer for a period of six months or more (a “participating employee”) may use up to one hour of paid leave to donate blood every 56 days in accordance with appropriate medical standards established by the American Red Cross, America’s Blood Centers, the American Association of Blood Banks, or other nationally recognized standards. A participating employee may use the one hour of paid leave only after obtaining approval from the employer. The Illinois Department of Public Health is charged with adopting rules governing blood donation leave, including rules that (i) establish conditions and procedures for requesting and approving leave and (ii) require medical documentation of the proposed blood donation before leave is approved by the employer.

Paid Voting Leave (P.A. 94-645)

Illinois has long had a provision providing employees entitled to vote with the right to be absent from work for a period of two hours between the opening and closing of the polls, providing they request leave the day before the election. 10 ILCS 5/17-5. On August 23, 2005, Governor Blagojevich signed into law various amendments to the Election Code which included revisions to the voting leave section. As amended, an employer must permit the absence during the employee’s working hours if the employee’s working hours begin less than two hours after the opening of the polls and end less than two hours before the closing of the polls. Moreover, such an absence now must be a paid absence.

What This Means for Employers

Employers with operations in Illinois should promptly educate their management and human resources personnel on these new leave laws. Employers with handbooks should revise them accordingly. Employers that do not currently operate in Illinois should take notice. Illinois has taken a very progressive stand on new paid and unpaid leave statutes. While Illinois is currently in the forefront on military family leave and, for that matter, paid blood donation leave, lobbying groups in other states will no doubt use Illinois as grounds for urging their legislatures to pass similar laws.

If you have questions or require further guidance on these laws and their implications, please contact the Seyfarth Shaw attorney with whom you normally work, or any Labor & Employment attorney in Illinois on our website at www.seyfarth.com.

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