

December 18, 2014

New York Employers Must Grant Leave to Volunteer Emergency Responders

Effective December 22, 2014, employers in New York State will be required to grant a leave of absence to employees who are volunteer firefighters or enrolled volunteer ambulance service members to serve in such roles during a declared state of emergency. The requirement is codified in New York Labor Law §202-l.

This requirement applies only where the employer has received a letter or other written certification from the head of the employee's volunteer unit notifying the employer of the employee's status as a volunteer emergency responder, and where the employee's duties as a volunteer emergency responder are related to a declared emergency. Leave that is properly supported may be denied only in cases where it would impose an undue hardship on the employer's business. ("Undue hardship" is defined according to the same standards used to evaluate religious accommodations in employment under the New York Executive Law.) In addition, an employer may require an employee returning from leave to provide a notarized statement from the head of his or her volunteer unit certifying the employee's period of emergency service.

Employers should also be aware of the following provisions of the new law:

- The statute applies only to a declared state or local emergency or disaster, as defined by New York law.

*747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.cfk-law.com*

- The statute guarantees a leave of absence only during the employee's actual performance of duties as a volunteer emergency responder. (Of course, if the employee becomes sick or injured in the course of those duties, other statutes may apply.)
- Leave pursuant to this statute may be unpaid or charged against other leave entitlements, as elected by the employee.

Employers who do not comply with the new law may be subject to prosecution for a misdemeanor offense; if found guilty, the possible penalties include fines up to \$500 and imprisonment.

The new law does not expressly require employers to notify employees of their right to take volunteer emergency responder leave, and appears to place the burden on local emergency organizations to notify employers of their potential need for assistance. To avoid confusion during a declared state of emergency, however, and to support their communities in times of need, employers may wish to amend their employee handbooks to explain the terms of volunteer emergency responder leave. Where the employer receives notice of an employee's responsibilities in an emergency, it would be wise to assess the conditions under which his or her absence during a state of emergency would present an undue hardship, and discuss any concerns with the employee before an emergency arises.

If you have any questions about the new law or would like to discuss updates to your employee policies, please contact John P. Keil at (212) 758-7862, or any other attorney at the Firm.

This Advisory is intended for informational purposes only and should not be considered legal advice. If you have any questions about anything contained in this Advisory, please contact Collazo Florentino & Keil LLP. All rights reserved. Attorney Advertising.