



New York State Department of Labor

David A. Paterson, *Governor*

M. Patricia Smith, *Commissioner*

July 31, 2008

(VIA FAX AND MAIL)

Re: Request For Opinion
Leave for Blood Donation/Breast Milk
Labor Law §§202-j and 206-c
File No. RO-08-0095

Dear [REDACTED]:

This letter is written in response to your e-mail of July 25, 2008 in which you ask whether an electronic posting on a company's intranet would be sufficient to meet the notice requirements set forth in the Department of Labor's guidelines for Labor Law §§202-j and 206-c.

Labor Law §202-j provides, among other things, that employers must grant three hours leave of absence in any twelve month period to any employee who seeks to donate blood. The Commissioner of Labor is empowered to establish guidelines for compliance with this statute, including guidelines for notice.

Labor Law §206-c provides, among other things, that employers shall provide reasonable unpaid break time or permit employees to use paid break time or meal time each day to allow employees to express breast milk for up to three years following child birth.

The Department of Labor has established guidelines for compliance with both of these sections of law. The guidelines for Labor Law §202-j state, in relevant part, that employers must give employees written notice of their right to take blood donation leave, which notice must "be made in a manner that will ensure that employees see it, such as by posting in a prominent spot in an area where employees congregate, inclusion of notice with employees' paychecks, mailings, notices in employee handbooks, *or other comparable method*," (Guidelines §V(a)). (Emphasis added).

Similarly, the guidelines for Labor Law §206-c state, in relevant part, that employers must give employees who are returning from work following the birth of a child notice of their right to take unpaid leave for the purpose of expressing breast milk, which notice "may either be provided individually to affected employees or to all employees generally through publication of such notice in the employee handbook *or posting of the notice in a central location*," (Guidelines §I(A)). (Emphasis added).

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Please be advised that electronic posting of such notices on a company's intranet would be deemed both a "comparable method" of giving notice of the right to take blood donation leave and the posting of notice "in a central location" of the right to take leave for the purpose of expressing breast milk provided that: the posting is made and maintained in a "prominent spot" on the intranet; all of the employees have easy access to the intranet during the course of their workday and may access the site without loss of pay or charge to time; such access is for a length of time reasonable for the purpose of locating and reading such notice; and, if employees who do not have such access are provided with notice in another manner that conforms to the Department's guidelines.

While intranet notice that conforms to the criteria discussed above may meet minimally acceptable posting requirements, the goal of the notice is to ensure that employees are aware of their rights under the law. Therefore the likelihood that employees will, in fact, be made aware that blood donation/breast milk policies exist, and will be able to locate such policies without undue effort or adverse consequence, will be the primary criteria used to determine whether the employer has provided the required notice. For example, the Department would not consider an employee to have "easy access" if the employee does not have his/her own computer station and is only able to receive "notice" from a computer shared with so many other people that it is difficult for the employee to gain access or to have access for more than a few minutes at a time.

The Department also wishes to suggest that the best way to provide notice of the employer's policies regarding leave to express breast milk is if such notice is provided to employees when they take maternity leave, since such notice will best assure that the required information is clearly delivered to the individuals who would have need for it. If such information is provided on an intranet to which an employee has easy access, the employer may provide the required notice merely by advising the employee of the intranet address for such information.

This opinion is based on the information provided in your e-mail of July 25, 2008. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts that have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Jeffrey G. Shapiro
Associate Attorney

JGS: jc

cc: Carmine Ruberto

