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Illinois Employers Now Have Leave Obligations for Military Families and Blood Donors

Illinois employers should be aware of two new laws that grant state authorized leave to employees: the Family Military Leave Act and the Employee Blood Donation Leave Act. The Family Military Leave Act, which became effective August 15, 2005, creates a new form of unpaid leave for spouses or parents of persons called to military service lasting longer than 30 days. The Act provides that every employee who has been employed by the same employer for 12 consecutive months, and for at least 1250 hours of service during the 12-month period immediately preceding the commencement of the leave, is entitled to family military leave during the time federal or State deployment orders are in effect. More specifically, an employer that employs between 15 and 50 employees must provide up to 15 days of unpaid leave and an employer that employs more than 50 employees must provide up to 30 days of unpaid leave. For purposes of establishing the total number of persons employed, the Act does not distinguish between full-time and part-time employees, nor does it limit qualifying employees to just those employed in Illinois.

Family military leave, however, is subject to certain conditions. For example, if leave will consist of five or more consecutive workdays, the employee must give at least 14 days notice of the intended date upon which the family military leave will commence. If the leave will be for less than five consecutive workdays, the employee shall give the employer "advanced notice as is practicable." In addition, the employee must first exhaust all accrued vacation leave, personal leave, compensatory leave and any other leave that may be granted to the employee, except sick leave and disability leave. Moreover, the employer may require certification from the proper military authority to verify the employee's eligibility for leave under the Act.

The Act also provides that any employee who exercises the right to family military leave is entitled to be restored to the position he or she held when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. Additionally, during any family military leave taken under the Act, the employer must make it possible for the employee to continue benefits at the employee's own expense. Furthermore, the Act prohibits employers from

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discriminating in any manner against any employee who exercises a right provided for, or opposes any practice made unlawful, under the Act. Finally, employees have the right to bring a civil action in circuit court to enforce the Act.

Another new law that will affect Illinois employers is the Employee Blood Donation Leave Act (“EBDLA”). The legislation, which takes effect January 1, 2006, is meant to encourage more people to give blood.

The EBDLA applies to any unit of local government, board of election commissioners, or any private employer in the state that employs more than 50 employees. For purposes of establishing the total number of persons employed, the Act does not distinguish between full-time and part-time employees, nor does it limit qualifying employees to just those employed in Illinois. Under the EBDLA, a full-time employee who has been employed by an employer for at least 6 months can take up to one hour of paid leave every 56 days in order to donate blood. Nonetheless, the employee may use the leave only after obtaining employer approval. Hence, while the statute grants employees the right to take this leave, it also appears to grant employers discretion to refuse such leave.

The EBDLA is also vague in that it does not address conditions or procedures for requesting or approving requests for blood donation leave. However, it instructs the Department of Public Health to adopt rules that address such issues, as well as the required medical documentation of the proposed blood donation. The Department of Public Health’s regulations are not anticipated until later this year. Once these regulations take effect, employers are encouraged to adopt a written policy for blood donation leave which requires written approval and official documentation of the blood donation.

While the Family Military Leave Act and the Employee Blood Donation Leave Act address very specific employment issues, they will nevertheless affect many employers and employers should be prepared to comply with these two new laws.

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If you have any questions or comments, please feel free to contact **Peter Steinmeyer** at 312/499-1417 in the firm’s **Chicago** office. Mr. Steinmeyer’s e-mail address is **psteinmeyer@ebglaw.com**.

Tanja Samardzija, an associate in the firm’s Chicago office, assisted with the preparation of this Alert.

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