

2024

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Introduction



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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction / Agenda
- NYS DOL Policy of the Rights of Employees to Express Breast Milk

Gianelle Duby – (12:05PM-12:15PM)

- Appealing an Unemployment Insurance Matter

Kali Schreiner – (12:15PM-12:25PM)

- Taking a Gamble: Plant Closings and Mass Layoffs Under the Warn Act

Travis Talerico – (12:25PM-12:35PM)

- Grieving Families Act Amendment

Kristen Smith – (12:35PM)

- Wrap Up

NYS DOL Policy of the Rights of Employees to Express Breast Milk



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INTRODUCTION AND PURPOSE

Section 206-c of the New York State Labor Law gives all employees in New York the right to express breast milk in the workplace. This law applies to all public and private employers in New York State, regardless of size or the nature of their business.

The New York State Department of Labor has developed the official policy on breast milk expression in the workplace as required by the law, ensuring that all employees know their rights and all employers understand their responsibilities. This policy is the minimum required standard, but employers are encouraged to include additional accommodations tailored to their workplace.

With the information provided below, employees will learn how much time they are allowed for breast milk expression, the kind of space employers are required to provide for breast milk expression, how to notify employers about the need to express breast milk in the workplace, and how to notify the Department of Labor if these rights are not honored.

Employers are required to provide this policy in writing to all employees when they are hired and again every year after. Employers are also required to provide the policy to employees as soon as they return to work following the birth of a child.

USING BREAK TIME FOR BREAST MILK EXPRESSION

Employers must provide reasonable unpaid break time for their employees to express breast milk. In addition, employees must also be permitted to use their paid break time or meal time to express breast milk. This time must be provided for up to three years following childbirth. Employers must provide unpaid break time at least every three hours if requested by the employee. However, the number of unpaid breaks an employee will need to express breast milk is unique to each

Appealing an Unemployment Insurance Matter



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Taking a Gamble: Plant Closings and Mass Layoffs Under the Warn Act



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WARN Act 29 U.S.C. § 2101	NY WARN Act New York Labor Law § 860
Employers must give employees 60 calendar days' notice in advance of plant closings and mass layoffs	90 days' notice
Applies to employers who employ 100 or more full-time employees	50 or more full-time employees

More About the WARN Act

- Remedial statute adopted in response to dislocation that occurred in the 1970's and 1980's
- Plant closing defined as “the permanent or temporary shutdown of a single site of employment, or one or more facilities or **operating units** within a single site of employment.”
- An employer who violates the WARN provisions by not providing appropriate notice is liable to EACH aggrieved employee for an amount including back pay and benefits for the period of violation, up to 60 days.

Resorts World Casino – Aqueduct Buffet

- Located within the Casino which operated 30 food and beverage options
- All the food outlets operated under the Casino's food and beverage department
- Background on food operations, hiring, training, management, and Collective Bargaining Agreement

Procedural History

- Buffet closing and same day notice;
- Employees filed a putative class action against the employer alleging that in failing to provide them with appropriate notice, the employer violated the federal and NY WARN Acts
- Both parties filed for summary judgment
- The E.D.N.Y. granted the employer's motion and dismissed the case against the employer
- Plaintiffs appealed to the Second Circuit, and in a 2-1 decision, the Court reversed the district court's dismissal

Operating Unit

- Refers to “an organizationally or operationally distinct product, operation, or specific work function within or across facilities at the single site”
- U.S. Department of Labor weighed in and explained that the critical factor is the organizational or operational structure of the single site of employment
 - Examples: assembly line at an automobile manufacturing plant, a data processing department, a housekeeping department, a clerical pool, and a product department could all qualify as operating units
- Second Circuit – no single consideration is dispositive.

Relevant Factors

- Physical Location
- Distinct Experience
- Staffing Arrangements
- Hiring
- Uniforms

Physical Location

Operating Unit	Not An Operating Unit
VP of the Casino's testimony that the Buffet occupied an area separate from other retail outlets and amenities	Not separated by any physical doors or walls within the Casino
Buffet did not share space with any other restaurants	
Buffet had a single entrance for guests who had to pass by a cashier station before being seated by a host	

Buffet as a Distinct Experience

Operating Unit	Not An Operating Unit
Only restaurant in Casino to operate on an all-you-can-eat basis	Cold items were prepared at a central location
Some food items were unique to the Buffet	Some menu items could be found at other food and beverage locations throughout the Casino
Some food items were prepared in a unique manner	Menu was determined by the Executive Chef for all food and beverage outlets
Buffet's kitchen prepared the bulk of the hot items	Food was "purchased" through a central location

Staffing/Hiring Arrangements

Operating Unit	Not An Operating Unit
Managers of the buffet's kitchen and front-of-house area worked at the buffet full-time, had buffet in job titles and oversaw employee work schedules	Executives who oversaw all the restaurants and determined which food would be served at the buffet
Employees generally assigned to the buffet for at least six months; not always treated as interchangeable like their food and beverage counterparts	Central operation oversight
Some food items were prepared in a unique manner	CBA did not identify the buffet as a separate department, division or unit
Employees wages were allocated to the Buffet's cost center	Applicant applied to a centralized HR office and provided a common orientation, given one handbook and culinary manual
Servers, cashiers and bus persons who worked at the buffet wore different color shirts	Cooks, stewards and hosts wore the same uniforms

Grieving Families Act Amendment



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Amended Grieving Families Act

- On May 2, 2023, a revised version of the Grieving Families Act (the “Act”) was introduced to the New York State legislature. The original version of the Act was passed by both the New York State Senate and Assembly in 2022, but was vetoed by Governor Hochul on January 31, 2023.
- The intent of the original version of the Act was to expand both the class of individuals who can recover under New York State’s wrongful death law and the categories and scope of damages that can be recovered through such a lawsuit.

Amended Grieving Families Act

- New York State's current wrongful death law limits those who can bring a wrongful death claim to "distributees" as defined under New York's Trust and Estates Law. The current law also restricts recovery to pecuniary damages, generally encompassing medical expenses, funeral costs, and loss of services (e.g. loss of earning potential) related to the deceased individual.

Amended Grieving Families Act

- The original version of the Act proposed expanding the class of individuals who could recover under a wrongful death claim to “close family members,” and also to allow for recovery of emotional and non-economic damages, for example, damages to compensate for grief or emotional anguish or loss of love and companionship. The original version of the Act also sought to expand the statute of limitations of New York’s wrongful death law from two years to three and a half years.
- While Governor Hochul generally expressed support for the Act as proposed in January 2023, she vetoed the Act because of concerns regarding its potential unintended economic impacts and because she perceived ambiguities as to whether the Act would have retroactive effect, and as to the definition of a “close family member.”

Amended Grieving Families Act

- The newly revised version of the Act attempts to address Governor Hochul’s concerns in several ways. First, it specifically defines a “close family member” as a decedent’s spouse or domestic partner, issue (children), foster-children, stepchildren, step-grandchildren, parents, grandparents, step-parents, step-grandparents, siblings or any person standing “in loco parentis” to a decedent. Under the revised Act, it would be for the “finder of fact” (the jury, or judge if a non-jury trial), to determine if a “close family member” is entitled to recover based upon “the specific circumstances relating to the person’s relationship with the decedent.”

Amended Grieving Families Act

- Second, the revised Act identifies the types of damages that can be recovered through a wrongful death lawsuit may be recoverable, including:
 - Reasonable funeral expenses of the decedent;
 - Reasonable medical expenses for medical care incident to the injury causing death;
 - Grief or anguish caused by the decedent's death;
 - Loss of love, society, protection, comfort, companionship, and consortium relating from the decedent's death;
 - Pecuniary injuries, including loss of services, support, or loss or diminishment of inheritance resulting from the decedent's death; and
 - Loss of nurture, guidance, advice, training, and education resulting from the decedent's death.

Amended Grieving Families Act

- Finally, the revised version of the Act seeks to increase the statute of limitations for a wrongful death claim from two years to three years (a reduction of six months from the original proposal), and clarifies that the Act has a retroactive effect applying to all causes of action that accrued on or after July 1, 2018, regardless of filing date.
- It remains to be seen if these revisions satisfy Governor Hochul's concerns, and will result in passage of the Act.
- The New York State Assembly has approved the amended version of the act, and it seems likely that the Senate will as well before the end of the legislative session, giving Governor Hochul another opportunity to pass the Act.

Your Questions



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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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