



Municipalities/School Districts Information Memo

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PUBLIC EMPLOYEES ENTITLED TO EXCUSED PAID TIME OFF FOR BREAST AND PROSTATE CANCER SCREENING

On July 21, 2008, Governor Paterson signed into law a bill amending both Civil Service Law §159-b and §159-c, which relate to leave granted to certain public employees for breast and prostate cancer screening respectively. The amendment, which becomes effective on August 20, 2008, clears up a major source of uncertainty for public employers, who in the past several years have become subject to several provisions of the New York State Civil Service Law which entitle employees to excused time off for breast and prostate cancer screening. The amendment makes clear what several New York State Supreme Court Justices have held in recent months, which is that the leave for breast and prostate cancer screening is, in fact, paid excused leave. In addition to specifying that the leave is to be paid, the amendment expands the class of public employers who are required to provide employees with this paid leave.

In 2002, §159-b was signed into law which allowed State officers and employees the right to take "excused leave to undertake a screening for breast cancer" not to exceed four hours on an annual basis. In 2006, §159-b was amended to add County employees to the group entitled to excused leave for breast cancer screening. In 2007, §159-b was once again amended, this time adding employees of school districts and local municipalities (except those employed by the City of New York) to the class of covered employees. Finally, in 2007, §159-c was signed into law which entitles certain public employees to excused leave for prostate cancer screening not to exceed four hours. Neither the original

text of §159-b and §159-c, nor the subsequent amendments to these laws, expressly stated whether or not the excused leave of absence for breast and prostate cancer screening was paid or unpaid.

This uncertainty led to several lawsuits brought by the Civil Service Employees Association ("CSEA") on behalf of members who were not paid for the leave they took for breast and/or prostate cancer screening. All three of the courts that decided this issue held that leave under §159-b and §159-c is, in fact, paid leave. In one of these decisions, New York State Supreme Court Justice Thomas D. Dolan remarked "The sensible and practical construction of §159-b is that the Legislature intended, not only that annual leave would be excused and not be charged against any other leave, but also that it would be a 'paid' leave." Matter of Moran v. City of Saratoga Springs, (Sup Ct. Saratoga County, July 24, 2008, Nolan, J., index No. 0400/08).

Governor Paterson's signing of the amendment quashes any remaining uncertainty regarding whether the excused leave must be paid. In addition to explicitly stating that leave pursuant to §159-b and §159-c is paid, the new law expands the class of public employers who are required to provide such leave. Therefore, effective August 20, 2008, every public officer and employee of the state and of any county, community college, public authority, public benefit corporation, BOCES, vocational education and extension board, school district, municipality and participating employer in the New York State and Local

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Employees' Retirement System or a participating employer in the New York State Teachers' Retirement System are entitled to take an excused paid leave for breast and prostate cancer screening. The justification for this expansion, according to the sponsors of the bill, is that "early screening is extremely important in detecting cancer, treating it and reducing costs of care. It is critical that this law be extended for in the long-run it saves lives and money."

While many employee groups hope to seize on the passage of this amendment and have additional legislation passed which would entitle employees to paid leave for additional forms of cancer, public employers may take some solace in comments made by Governor Paterson upon signing the bill. In a memo he attached to the signed bill, Governor Paterson remarked that "Continuous expansion of permissible paid absences, however, can quickly become an undue burden on public employers. For that reason, I wish to clarify that my endorsement of this legislation should not be taken to mean that I believe that this bill should be a template to be followed with the legislative imposition of additional leaves. To the contrary, I think this bill provides a good opportunity to set a boundary. I think the time has come to limit further expansion."

To summarize, essentially all public employees are entitled to take up to four hours of paid leave for prostate cancer screening, as well as up to four hours for breast cancer screening. Furthermore, this paid leave is not to be deducted from accrued leave. According to Civil Service guidelines, physical examinations, blood work, as well as the travel time to and from these screenings, are all included in this four hour cap. Absence beyond the four hour cap must be charged to leave credits. Employees who undergo screenings outside their regular work schedules do so on their own time. For example, employees are

not granted compensatory time off for breast or prostate cancer screenings that occur on pass days or holidays. In addition, civil service guidelines note that while proof of the screening is not required by statute, employers may require satisfactory medical documentation that the employee's absence was for the purpose of breast or prostate cancer screening.

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