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### CLIENT ADVISORY

#### LEAVE OF ABSENCE FOR BLOOD DONATION

On December 13, 2007, Section 202-j was added to New York's Labor Law. The new law requires all persons or entities that employ 20 or more employees at one or more work sites to provide employees with no fewer than *three hours* of leave time to donate blood *within any twelve-month period*. All employees who perform services for hire and work for an average of 20 or more hours per week at any site operated and owned by the employer are eligible. Independent contractors are explicitly excluded from coverage. The law covers both public and private entities.

The new law leaves many questions unanswered and raises some troubling issues. First, the law is silent on whether the required leave is paid or unpaid. Second, the statute does not define the "twelve-month period" (e.g. fiscal year, calendar year, or rolling twelve months based on when the employee last took leave). The statute authorizes the New York State Commissioner of Labor to issue guidelines which may answer these questions.

One troubling aspect of the law is the impact on those employers who already sponsor on-site blood drives. Clearly the intent of granting three hours of leave time was to ensure that an employee had a reasonable time to travel to off-site blood collection sites, donate blood, and then return to work. Indeed, in signing the legislation Governor Spitzer observed that many employers already sponsor or participate in blood drives, yet those employers would be required to provide the same three hours of leave time as employers who do not. We are advised that an amendment has been proposed which would give an employer the option of providing three hours of leave time or permitting employees to donate blood during work hours at least two times per year at a convenient time and place to be set by the employer. Pending adoption of that amendment, or a favorable interpretive regulation from the Department of Labor, all employers must grant the leave.