

## Using Leaves in Employee Evaluations

### FEATURED ATTORNEY



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#### ***From the desk of Rachel Demarest Gold***

If you have a 'no fault' attendance policy, offer attendance bonuses, or use absence in your employees' evaluations in any way, take note: **Effective TODAY – February 19, 2023**, an amendment to the **State Retaliation Laws** prohibits Employers from using absences that are part of legal leaves (FMLA, Paid Family Leave, e.g.) as criteria in employee evaluations. You can learn more about that Law here: <https://www.nysenate.gov/legislation/bills/2021/S1958>

**New Laws re: Nursing Mothers:** Though facilities and breaks for nursing mothers have been the law for some time, a new law takes effect in June that imposes several very specific requirements, including notice to all employees. Employers can a Fact Sheet from DOL about the law here:

<https://dol.ny.gov/system/files/documents/2021/03/fact-sheet-rights-of-nursing-mothers-to-pump-breast-milk-at-work-information-for-employers-p709.pdf> and a sample of the notice that will be required here:

<https://dol.ny.gov/system/files/documents/2021/03/fact-sheet-your-right-as-a-nursing-mother-to-pump-breast-milk-at-work-p708.pdf>

In addition to the notice, nursing employees are entitled to unpaid breaks as frequently as needed for up to three years after they give birth. If your workers are hourly, make sure they clock out when they take these breaks. Employers must provide a private room – separate from the bathroom – that contains a chair and small table, and should have both an electrical outlet and clean water supply. If there is refrigeration in the workplace, nursing mothers must be granted access for storage.

**Electronic Notice Requirements:** And speaking of notices- State law now requires that all notices that must be posted pursuant to New York labor laws must also be provided to employees electronically. This can mean by email or by posting on a website; however, employers must notify employees of what method they will use.

**Veteran Benefits and Services Notice:** One such notice is new this year and should be posted and distributed by all employers with fifty or more employees right away. That is the Veteran Benefits Notice and it can be found here: <https://dol.ny.gov/system/files/documents/2022/12/p37-vets-benefits-and-services-12-28-22.pdf>

This is the first addition this year to Employers' posting requirements; all of which can be found at this link: <https://dol.ny.gov/posting-requirements-0>

While all these rules need to be on every Employer's radar, how they should be implemented for each business and location must be individually assessed. We will keep you posted on tremors and trends throughout 2023, but please let us know if we can be helpful in the meantime. This is provided for informational purposes only and is not legal advice.