

STATUS:**S4988** FOLEY Same as [A 9856](#) Thiele

Labor Law

TITLE....Requires employers to authorize absence from or lateness to work if such absence or lateness was due to responding to an emergency as a volunteer

04/27/09 REFERRED TO LABOR
 06/01/09 1ST REPORT CAL.513
 06/02/09 2ND REPORT CAL.
 06/03/09 ADVANCED TO THIRD READING
 07/16/09 COMMITTED TO RULES
 01/06/10 REFERRED TO LABOR
 02/22/10 REPORTED AND COMMITTED TO CODES
 04/07/10 1ST REPORT CAL.331
 04/08/10 2ND REPORT CAL.
 04/12/10 ADVANCED TO THIRD READING
 05/24/10 PASSED SENATE
 05/24/10 DELIVERED TO ASSEMBLY
 05/24/10 referred to labor
 06/08/10 substituted for a9856
 06/08/10 ordered to third reading rules cal.67
 06/08/10 passed assembly
 06/08/10 returned to senate
 08/18/10 DELIVERED TO GOVERNOR
 08/30/10 VETOED MEMO.6791

SUMMARY:

FOLEY, MAZIARZ

Add S202-1, Lab L

Requires employers to authorize absence from or lateness to work if such absence or lateness was due to responding to an emergency as a volunteer firefighter or ambulance worker.

VOTING:

[05/24/10](#) S4988 Senate Vote Aye: 58 Nay: 0

Floor Votes:

05/24/10 S4988 Senate Vote Aye: 58 Nay: 0

Aye Adams	Aye Addabbo	Aye Alesi	Aye Aubertine
Aye Bonacic	Aye Breslin	Aye DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Espada	Aye Farley
Exc Flanagan	Aye Foley	Aye Fuschillo	Aye Golden
Aye Griffo	Aye Hannon	Aye Hassell- Thompson	Aye Huntley
Aye Johnson C	Exc Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Exc Leibell	Aye Libous	Aye Little	Aye Marcellino
Aye Maziarz	Aye McDonald	Aye Montgomery	Exc Morahan

Aye Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Peralta	Aye Perkins	Aye Ranzenhofer
Aye Robach	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Aye Seward	Aye Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Aye Volker
Aye Winner	Aye Young		

VETO MESSAGE:

VETO MESSAGE - No. 6791

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 4988, entitled:

"AN ACT to amend the labor law, in relation to prohibiting an employer from terminating an employee who also is a volunteer firefighter or a volunteer provider of emergency medical services when that employee misses or is late to work because of an emergency to which the employee was dispatched"

NOT APPROVED

This bill would bar an employer from terminating an employee solely because of lateness to or absence from work, when such absence or lateness is due to the performance of the employee's duties as a volunteer firefighter or an enrolled member of a volunteer ambulance service pursuant to Article 30 of the Public Health Law. All applicable missed work time, including travel to and from the volunteer duties, would be charged against any leave to which the employee was entitled. If the employee had no available leave time, the bill would mandate that the employer either: (a) give the employee three hours of leave for every 12-month period for such volunteer response or (b) allow two authorized

absences for such purpose each year. The employer would be permitted to request verification of the volunteer activity from the head of the firefighter or ambulance unit. The bill does not address what consequences might apply to an employee who responded to a volunteer call during work hours, once the authorized absences or extra hours provided by the bill were exhausted.

Volunteer firefighters and members of ambulance corps perform a service crucial to communities across the state of New York. Individuals who undertake this responsibility set extraordinary examples for other New Yorkers through their civic-minded spirit, and are deserving of the highest praise and respect. This bill has the worthy goal of protecting these volunteers from dismissal for their volunteer activities. It suffers, however, from numerous problems.

First, the bill's intent is unclear. The first section of the bill sets forth a broad prohibition of any termination due to volunteer fire or ambulance activity. Another section, however, appears to create only a limited mandatory expansion of leave time for such activity. The

latter provision implies that when the extra leave has run out, the employer may terminate the employee for continued absence or lateness, but this conclusion seems in contradiction to the broader bar on termination.

Second, only those who have used all of their entitled leave time would benefit from the extra leave time provision, while those who have conserved leave would lose it when responding to a volunteer call. Therefore, the bill seems to reward those who exhaust leave time, while providing no relief for those who use it more cautiously.

Third, the bill would impose potential hardships on employers, due to the unpredictability of volunteer activities. Employers who run time-sensitive or specialized operations could suffer significant inconvenience when an employee without notice does not show up to work. To compensate for the unanticipated loss of an employee, employers may need to extend other employees' shifts, pay overtime wages or set up a backup structure to avoid the inconvenience of these absences.

Fourth, the bill could have the perverse effect of deterring employers from hiring those engaged in volunteer activities, in an attempt to avoid the difficulties above described. In such case, fewer people may sign up to be volunteers.

Finally, the bill would require public employers to provide a benefit that should be the subject of collective bargaining under the Taylor Law.

Despite these problems, the end of the bill seeks to achieve is worthy, and a narrower and more clearly drafted bill aimed at providing some protection to volunteers from termination as a result of their response to an emergency would warrant consideration. But this bill is too ambiguous and contains too many flaws to warrant enactment, despite its admirable purpose.

The bill is disapproved.

(signed) DAVID A. PATERSON
