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PAID FAMILY LEAVE COMING TO NEW YORK

New York will join a handful of other states in offering Paid Family Leave (PFL) starting January 1, 2018. While the law was passed last year, the Regulations providing guidance for employers and employees were only finalized in July of this year.

What Employers Are Covered

Private employers with one or more employees are covered by the law. Sole Proprietors (as defined by the law) are not covered, but may opt into the program if they meet the standard to do so. Some other categories are also excluded, such as black car operators and farm workers.

What Employees Are Covered

Employees who have been employed full-time for at least 26 weeks or part-time for 175 days during the past 52 weeks are eligible to take PFL. The Regulations define "part-time" as fewer than 20 hours per week.

Employees who do not meet the eligibility requirements must be given the option to waive PFL. Employers should obtain this waiver in writing. It should advise the employee of the consequences of waiving PFL (including the consequences if the employee later becomes eligible for PFL).

Obtaining Coverage

Employers must obtain a PFL policy through their disability insurance carrier. Employers who currently self-insure disability may also self-insure PFL if approved to do so by the Commissioner of the Worker's Compensation Board.

Paying for PFL Through Deductions from Employees' Wages

The PFL benefit will be paid for by deductions from employees' wages. The Department of Financial Services issued Regulations in June that those deductions may start on or after July 1, 2017 and will be .126% of an employee's average weekly wage not to exceed .126% of the state Average Weekly Wage (adjusted annually). This means that the maximum deduction, at this time, is approximately $1.65 per week.

Just recently, the New York State Department of Taxation has issued an N-17-12 Bulletin indicating such deductions will be made from employees' **after-tax** wages.

When Is PFL Available?

PFL is not available for an employee's own illness. Rather, it is available to care for a family member with a "serious health condition;" for the birth, adoption, or foster placement of a child; and for qualified reasons relating to military deployment.

Benefit of Paid Family Leave

PFL provides employees with job protection (employees must be restored to the same or similar job), health insurance protection (employers must maintain employee health insurance), and a sliding statutory benefit. The monetary amount of the benefit and the time an employee can take increases between 2018 and 2021. More information on the benefit is available at: https://www.ny.gov/programs/new-york-state-paid-family-leave.

Posting and Notice Requirements

The regulations provide for various posting and notice obligations of the Employer, including a poster, inclusion in the employee handbook, and notice to employees by other means that such notice is routinely given. They also provide that the Commissioner will develop a template for such posting and notice. To date, one has not been published.

(Continued on page 2)

THIS ISSUE

Erica Lawson and Tina Fernandez at "En-Joie the Day on HH&K"

PAID FAMILY LEAVE COMING TO NEW YORK (CONTINUED)

(Continued from page 1)

In order to take leave, an employee must provide at least 30 days of notice where it is possible for the employee to do so. In all other cases, the employee must provide as much notice as possible. The Regulations also address the types of documentation from medical providers and others that will be deemed sufficient. Forms for requesting PFL and certifying the necessity for it will be available from the Worker's Compensation Board.

Steps to Take Now

Employers who want to start deductions from employee wages, but have not already done so, should arrange with payroll to make the deductions and give employees at least 7 days notice. Employers with Collective Bargaining Agreements should review those agreements and may need to bargain with their unions over the deductions (which are not mandatory) and other matters. Finally, employers should watch for the Commissioner's model notice to be published and the forms to be made available.

Hinman, Howard & Kattell, LLP will be providing additional information on Paid Family Leave at various upcoming programs. Please watch your e-mail and our website for details.

Article written by Dawn J. Lanouette, Esq. For more information, contact Ms. Lanouette at (607) 231-6917 or via email at dlanouette@hhk.com; John C. Fish at (607) 231-6712 or via email at jfish@hhk.com or Thomas Conlon at (607) 231-6744 or via email at tconlon@hhk.com

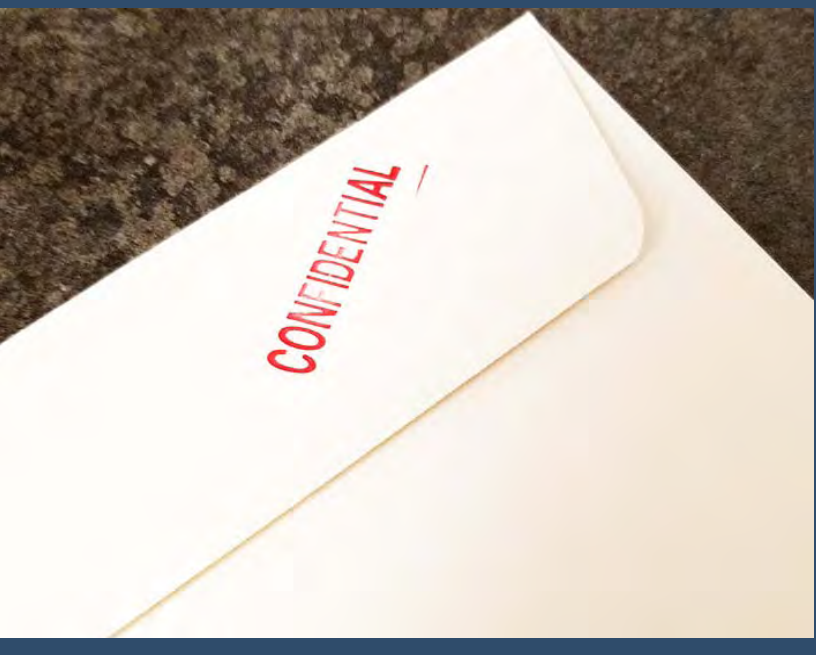
SEALED CONVICTIONS

Starting on October 7, 2017 a person who has been convicted of two eligible crimes, including one eligible felony, may make an application to have those convictions sealed. The primary qualification is that at least 10 years must have elapsed since either sentence was imposed or from the time the person was released from jail on the latest conviction.

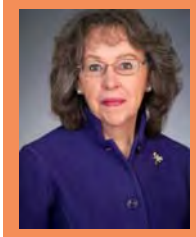
Crimes that are not eligible for this treatment include sex offenses contained in Article 130 of the New York Penal Law and crimes which require sex offender registration defined in Penal Law Article 263. Also excluded are violent felonies (Penal Law §70.02), homicide offences (Penal Law Article 125), Class A felonies, and other certain felony conspiracy and felony attempt crimes.

In order to have the convictions sealed, the person must file an application and a hearing may be required. Sealing is within the discretion of the Court. It should be noted that the sealing of convictions is not an expungement or dismissal of the conviction, and there are situations where the conviction must still be disclosed, such as licensing permits for firearms or employment as a peace or police officer. However, those offenses which are ultimately sealed will not have to be disclosed on most job applications.

Article written by Jon S. Blechman, Esq. For more information, contact Mr. Blechman at (607) 231-6834 or via email at jblechman@hhk.com.



CONGRATULATIONS!



Katherine A. Fitzgerald, Esq.

Partner Katherine A Fizgerald was recognized by the American Institute of Family Law Attorneys as one of the "Ten Best Female Attorneys in New York for Client Satisfaction in the practice area of Family Law" for 2016.

Ms. Fitzgerald is the Chair of HH&K's Domestic Relations, Matrimonial and Family Law Practice Group and has recently become a member of the Board of Trustees of the E. L. Rose Conservancy, a nationally accredited nonprofit Land Trust.

Gary C. Tyler, Esq.

Partner Gary C. Tyler was recognized by the American Institute of Legal Counsel as one of the "10 Best Workers' Compensation Attorneys" for New York for Client Satisfaction.

Mr. Tyler is the chair of HH&K's Workers' Compensation and Disability Benefit Practice Group.

Linda B. Johnson, Esq.

Partner Linda B. Johnson was appointed to teach at the Wyoming Regional Seminar on 2017 Psychodrama for Lawyers Course. Linda has lectured on topics such as the use of active listening to improve trial skills for the Academy of Trial Lawyers, Women in the Law for the New York State Bar Association, mechanic's liens and related considerations for construction industry clients, and family business dispute litigation.

Ms. Johnson practices focus on construction, commercial and personal injury litigation.

Dawn J. Lanouette, Esq.

Partner Dawn Lanouette recently became a SHRM Senior Certified Professional. Ms. Lanouette spoke at the September 29, 2017 Opioid Crisis Enters the Workplace Session hosted by the Otsego County Chamber of Commerce.

Ms. Lanouette's practice focuses on Labor and Employment, Healthcare and Cyber Security Law.

INTERNAL REVENUE CODE SECTION 1031 PRIMER

Introduction to 1031 Exchanges

When a taxpayer sells investment real property which results in a gain, the taxpayer generally has to pay tax on the gain at the time of the sale. Any subsequent purchase of real property to replace the property sold would then be purchased using the net, after-tax proceeds from that sale. However, as an alternative to paying tax at the time of the first sale, a taxpayer has the option to defer payment of the tax for certain qualifying transactions under Section 1031 of the Internal Revenue Code (see 26 USC § 1031, et. seq. and Treasury Regulations § 1.1031, et. seq.). A Section 1031 exchange transaction has the same legal outcome as a series of taxable sale transactions, with the advantage that the tax due on the gain from the first part of the exchange transaction is deferred.

There are three basic types of 1031 exchanges. The first, (and seldom used), option is a simultaneous or concurrent exchange where one or more properties are swapped simultaneously on the same day for one or more replacement properties. The second and most often used is a forward 1031 exchange, where a property is transferred by a qualified intermediary on behalf of the taxpayer and a replacement property is later acquired. The third (and again seldom used) option is a reverse 1031 exchange, where the replacement property title is "parked" with an exchange accommodation title holder on behalf of the taxpayer, and then later exchanged for a relinquished property.

Property Qualifying Under 1031

To qualify as a tax deferred Section 1031 exchange of real properties, and not as a separate taxable series of transactions, a taxpayer must relinquish one property and replace it with another property. The relinquished property and the replacement property must be both of like-kind and used in a trade or business or for investment. Property that does not qualify for a Section 1031 exchange includes your primary residence, a second/vacation home, property acquired for development and subsequent "flip," property primarily held for sale to customers, and cash/cash equivalents, stocks, bonds or equity ownership interests in an entity.

Property that is "like-kind" is of the same nature, character or class. Quality or grade does not matter. Most real estate will be like - kind to other real estate, regardless of the improvements or type of property. A shopping mall property can be like-kind to vacant land. However, a leasehold interest or improvements conveyed without land is not like-kind to fee simple title in real estate. Real estate inside the United States is not like-kind to real estate in a foreign country. Personal property, such as equipment used in a trade or business, may be exchanged for like-kind personal property, commonly occurring when trading in equipment with a dealer (see Rev. Rul. 61-119). Personal property held for investment, such as gold bullion, may also be exchanged for other like-kind bullion-type coins, but not numismatic coins (See Rev. Rul. 82-96).

1031 Time Limits

There are several time limits that must be strictly complied with in order for the transaction to qualify as a Section 1031 exchange. The first is the identification period: the replacement property must be identified within 45 days of the relinquished property being transferred. The taxpayer must identify the replacement property in writing by delivering a signed instrument to another party involved in the exchange— either the seller or the qualified intermediary. The real estate must be clearly described by way of legal description, property address, or distinguishable name.

The second time limit is that the replacement property must be received by the taxpayer and the exchange completed no later than 180 days after the transfer of the relinquished property or the due date (with extensions) of the taxpayer's income tax return for the tax year in which the relinquished property was transferred, whichever is earlier. The 45 and 180 day periods must be strictly complied with, and will not be extended for any reason, hardship, weekend or holiday.

1031 Procedures and Qualified Intermediaries

To qualify as a Section 1031 exchange, the taxpayer must not receive money or other property upon the transfer of the relinquished property before actually receiving like-kind replacement property. If the consideration for the relinquished property is actually or constructively received before the like-kind replacement property is received, the series of transactions will not qualify under Section 1031 and the result is a taxable sale. In order to avoid this unintended taxable result, the IRS has provided qualified intermediary safe harbor procedures (see Rev. Proc. 2000-12).

A qualified intermediary ("QI") is essentially a straw-man, or a person that steps into the taxpayer's shoes during the course of the Section 1031 exchange completion period. A QI is a person who is not the taxpayer or a disqualified person and enters into an exchange agreement with the taxpayer. The QI exchange agreement provides that the QI essentially controls the Section 1031 exchange on the taxpayer's behalf without the taxpayer's direct control. The QI will acquire the relinquished property from the taxpayer, transfer the relinquished property to a third party, hold the proceeds from that sale, acquire the replacement property, and then finally transfer the replacement property to the taxpayer. By following the established IRS procedures and guidelines with a properly drafted QI agreement, the parties can ensure compliance with Section 1031 and successfully defer capital gains tax.

Article written by Ryan M. Mead, Esq. For more information, contact Mr. Mead at (607) 231-6928 or via email at rmead@hhk.com.

2017 NEW YORK SUPER LAWYERS

What is Super Lawyers? Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement. The selection process includes independent research, peer nominations and peer evaluations. Hinman, Howard & Kattell is happy to announce that twenty firm attorneys have been named in the 2017 listing of New York Super Lawyers—Upstate Edition and Metro Edition.

Banking:
James W. Orband, Esq.

Estate and Probate:
Jon J. Sarra, Esq.

Family Law:
Katherine A. Fitzgerald, Esq.

Banking:
David L. Glass, Esq.

Employment and Labor:
James S. Gleason, Esq.

Employment Litigation - Defense:
Leslie Prechtl Guy, Esq.

Personal Injury - Plaintiff:
Linda B. Johnson, Esq.

Environmental Law:
Kenneth S. Kamlet, Esq.

Elder Law:
Martin J. Kane, Esq.

Employment Litigation - Defense
Dawn J. Lanouette, Esq.

Business/Corporate:
Erica L. Lawson, Esq.

Real Estate:
Lillian L. Levy, Esq.

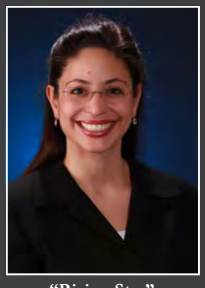
Business Litigation:
Albert J. Millus, Jr., Esq.

Employment & Labor:
Dennis P. Sheehan, Esq.

General Litigation:
Paul T. Sheppard, Esq.

Workers' Compensation:
Gary C. Tyler, Esq.

"Rising Star"
Real Estate:
Megan E. Curinga, Esq.



"Rising Star"
General Litigation:
Tina Fernandez, Esq.

"Rising Star"
Business Litigation:
Daniel R. Norton, Esq.

"Rising Star"
Tax:
Alexander D. Racketa, Esq.

MINORITY AND WOMEN'S BUSINESS DEVELOPMENT

It can be difficult for minority and women-owned businesses to compete in an economy where the "old boys club" mentality prevails. To level the playing field, the Department of Economic Development established the Minority and Women's Business Development ("MWBE") certification to remove barriers and develop the economy through tax breaks and priority access to state contracts for minority and women business owners.

To obtain a MWBE certification, a business must be a certified business enterprise. According to 5 NYCRR § 140.1, a business enterprise is a business that has been approved by the Division of Minority and Women's Business Development subsequent to verification that the business enterprise 1) is owned, operated, and controlled by minority group members or women; 2) meets specific financial requirements; and 3) is considered a small business.

To qualify as a minority-owned business enterprise, a minority must operate and control the business and must have at least 51% ownership. To constitute a minority, an owner must fall within one of the following ethnic groups: 1) Black; 2) Hispanic; 3) Asian-Pacific; 4) Asian-Indian Subcontinent; or 5) Native American or Alaskan Native. Similarly, to qualify as a woman-owned business enterprise, a woman (or women) must operate and control the business enterprise, and must have at least 51% ownership of the business.

In addition to ownership, minority and women-owned businesses must demonstrate operation and control by the minority or women that is real, substantial, and continuing. This demonstration may be made through documents, such as payroll, leases, letters of credit, insurance bonds, banking and service contracts, and other business transactions that demonstrate independent control on a day-to-day-basis by the minority or women owner(s).

Additionally, New York State places several other restrictions on eligibility. The first requires minority and women owners to have a personal net worth of less than $3.5 million after permissible deductions. Another restriction is that minority and women-owned business enterprises must have fewer than 300 full time employees.

Moreover, minority and women business owners must provide their current personal and business federal and state tax returns, including all schedules. Their business must have operated independently of other firms for at least one year, and for out-of-state businesses, must have a certification as a minority or women's business enterprise in their home state before obtaining certification in New York.

Article written by Dawn J. Lanouette, Esq. and Marina Resciniti. For more information, contact Ms. Lanouette at (607) 231-6917 or via email at dlanouette@hhk.com.

PROUD TO ANNOUNCE

Victoria J. Morton, Esq.

Has joined the Firm as Special Counsel in our new Palm Beach Gardens, Florida office. Ms. Morton focuses her practice on providing legal assistance to homeowners associations, condominium associations, and landlords. Ms. Morton serves as general counsel for her community association clients and represents her clients in diverse legal matters, including foreclosure of assessment liens, evictions, covenant enforcement, breach of contract litigation, and fair housing disputes.

Carolina K. Wu, Esq.

Has joined the Firm as an Associate in the Real Estate and Business Practice Groups. Her practice involves real estate loans, purchases, sales, and other transactions for purchasers, sellers, lenders, and borrowers.

Ms. Wu's intern experience includes the U.S Attorney's Office- Tax Division, the California Attorney General's Office in the Health, Education, and Welfare division, and Trusts and Estate and Business Transactions practice.

Michelle E. Whitton Cowan, Esq.

Has joined the Firm as Special Counsel in our Syracuse Office. Ms. Whitton Cowan is a member of our firm's Workers' Compensation and Disability Benefits Practice Group and handles both Workers' Compensation and Social Security Disability claims. Ms. Whitton Cowan is experienced in handling all matters involving Workers' Compensation Law, including representing injured workers, defending insurance companies, and representing self-insured employers.

William J. Ciaravino, Esq.

Has joined the Firm as Special Counsel bringing with him more than thirty years of experience, concentrating in residential real estate law, wills and probate and zoning matters. Bill actively represents clients who are selling, purchasing and refinancing residential real estate. He represents clients for wills and probate. He also represents clients in code and zoning matters, including appearances before zoning boards throughout Broome and Tioga Counties.

Joshua R. Landsman, Esq.

Has joined the Firm as Special Counsel in our Boynton Beach, Florida Office. Mr. Landsman also has experience advising clients in the Pension and Employee Benefits, Taxation, and Corporate Law practice areas.

Mr. Landsman is a member of the Florida Bar and the District of Columbia Bar. He is also a member of the American Bar Association and Florida Bar's sections on Real Property, Probate and Trust Law and Taxation.

Nir E. Gozal, Esq.

Has joined the Firm as Special Counsel in our White Plains Office. Mr. Gozal focuses his practice on advising bank and other financial institutions on regulatory compliance and matters involving federal and state regulatory agencies. Mr. Gozal has unique expertise in BSA/AML/OFAC and consumer compliance, and has represented financial institutions, their boards of directors, and executive officers in challenging conclusions in reports of examination and contesting enforcement actions. In addition, he provides ongoing counsel to bank boards of directors, executives, and compliance officers.

Andria R. Adigwe, Esq.

Has joined the Firm as an Associate in the Business and Corporate Law and Commercial Litigation practice groups at Hinman, Howard & Kattell. Ms. Adigwe concentrates her practice on assisting businesses and corporate clients in effectively protecting their interests. She has experience with disputes, international commercial transactions and immigration questions impacting employers.

Derek S. Underwood, Esq.

Has joined the Firm as Special Counsel in our Syracuse Office. Mr. Underwood brings 20 years experience spanning estate planning, business law, real estate, general practice, intellectual property and technology law.

'TRADING PLACES' AND THE ROLE OF DOMICILE IN ESTATE PLANNING

In the world of real estate, it has been said that the three most important things a property should have are "location, location, location." For many of our clients who spend time in multiple states ("snowbirds" – I'm talking to you), it's difficult to determine which location, location, or location is one's "domicile" for tax and estate planning purposes. A common fact pattern among our clients involves the longtime New York residents with a Florida vacation home seeking to make Florida their domicile because, among other things, Florida has no state income tax, no state estate or inheritance tax, and temperatures above 70 degrees in the winter. This article is intended to provide a brief overview of the concept of domicile, discuss specific action items which provide objective evidence of a change of domicile to Florida, and next steps for those looking to have more fun in the sun. While this article focuses on changing domicile to Florida, the concepts may be considered in changing domicile to and from other states (i.e. New Jersey to Texas).

What is Domicile?

As with most estate planning concepts, domicile is not a one-size-fits-all concept and there is no universally adopted definition of the term. However, the states (and the Internal Revenue Service) share a general understanding of what the term means. In Florida, legal residence or "domicile" is the place where a person has fixed an abode with the present intention of making it his or her permanent home. Interestingly, at least one Florida court has held that a husband and wife can each have a different domicile if they live separately in a "nontraditional" marriage without fraudulent intent. *See Judd v. Schooley*, 158 So.2d 514 (Fla. 1963) (involving approval of a homestead tax exemption for a wife whose husband was a non-domiciliary).

Further, once established, a domicile continues until it is superseded by a new one. Under Florida case law, a domicile is presumed to continue, and the burden of proof ordinarily rests on the party asserting the abandonment of one domicile to demonstrate the acquisition of another. Therefore, there are two key factors in the above definition to consider when looking at domicile – residence and intent.

From "New York State of Mind" to "Florida State of Mind"

Let's go back to our common example involving longtime New York residents with a Florida vacation home who decide to make Florida their permanent home. Once it is determined that Florida domicile is desirable, clients must take steps to terminate their New York domicile and adopt Florida domicile. The first step is to review New York laws relating to domicile. Many states, including New York, have statutes defining domicile for taxation or other purposes, creating a road map for avoidance of domicile. For example, if successful in establishing domicile in Florida, New York income will still be subject to New York State income tax in tax years where an individual is considered a foreign domiciliary who is a New York resident. Generally, when an individual is determined to be present in New York for a period of 183 days or more, New York will consider that person a New York resident for income tax purposes. Retention of records (i.e. airline tickets, credit card bills, telephone records, etc.) is critical in state income tax audits centered on the issue of residency.

Home Is Where the Heart (among other things) Is

Once you have made the decision to make Florida your domicile, it is advisable to take specific steps to indicate that intent. Below are some examples of specific acts that may be undertaken to provide objective evidence of your subjective intention to make Florida your domicile.

1. File a "Declaration of Domicile" in Florida.
2. File for a Florida Homestead Exemption.
3. Obtain a Florida Driver's License and relinquish your New York Driver's License.
4. Register to vote in Florida (and actually go out and vote).
5. Execute Florida estate planning documents, including a Last Will and Testament, which recite your residence as Florida.
6. Acquire Florida license plates and relinquish New York license plates.
7. Change your address on credit cards and other financial accounts to your Florida address.
8. Change your address on your passport to your Florida address.
9. Transfer works of art, expensive furniture, and heirlooms to Florida.
10. File a non-resident New York income tax return, if appropriate.
11. Establish club affiliations in Florida.
12. Establish religious affiliations in Florida.
13. Consider acquiring cemetery plots in Florida.
14. Consider selling New York real property.

Please note that the list above is not exhaustive and no one factor is dispositive in establishing domicile. In fact, a change of domicile may be challenged even if a majority of the items on this list are satisfied. As stated above, while subjective intent is what is determinative in establishing domicile, intent cannot be shown directly. Therefore, taxing authorities and courts place substantial weight on objective evidence (i.e. establishing the existence of items like those listed above).

Next Steps

This article is not intended to be comprehensive; however, I hope it provides some "food for thought" for those that have considered changing their domicile, may be moving to another state because of a job relocation, or have property (in particular real estate) in multiple states. If you are considering changing domicile, you should consider engaging legal counsel to assist you in reviewing your particular case. As part of the process, I also consider a review of your existing estate planning documents to determine what changes, if any, are needed to accomplish your goals and objectives.

Article written by Joshua R. Landsman, Esq. For more information, contact Mr. Landsman at (561) 276-1008 or via email at jlandsman@hhk.com.

PRESENTATION

ESTATE PLANNING FOR YOUNG PROFESSIONALS
November 7, 2017 at 8-9 AM

JEREMY P. SEDELMEYER, ESQ.
will be Co-Presenting
at the
Koffman Southern Tier Incubator

Sponsored by
United Way of Broome County—Emerging Leaders Society

TRAFFIC TICKETS IN BROOME COUNTY

There are 62 counties in New York State, so there are likely 62 different ways to answer a traffic ticket. The good news is that Broome County is one of the counties that have a traffic diversion program!

Traffic Diversion is a program run by the Broome County District Attorney's office that, in its most simplistic terms, allows you to submit an application and pay a fine and, if accepted into the program, have your ticket dismissed after completion of a DMV-approved driver safety course.

There is, of course, a lot more to it. Only specific offenses are eligible for participation in traffic diversion. Misdemeanor tickets or cases where there was a motor-vehicle accident are likely not going to be allowed into the program. Also, you are not eligible if you have participated in the program within the last eighteen (18) months.

The list of eligible offenses can be found at: www.gobroomecounty.com/da/diversion.

The process is not a quick one, and generally involves both the Court and the DA's office. Traffic tickets often have a court date on the bottom of the ticket, and court permission is needed to be eligible for the program.

Most cases will follow this general process:

- Ticket is received
- Review the violation or charge to ensure the ticket is eligible for diversion
- Adjournment of the court date to participate in the traffic diversion program
- Complete the application and mail in the check to the DA's office – application is online at:

http://www.gobroomecounty.com/files/da/Traffic%20Diversion/APPLICATION%20FOR%20BROOME%20COUNTY%20TRAFFIC%20DIVERSION.pdf

- Wait to be accepted into the program by the DA's office
- Once accepted, complete the DMV-approved driver's safety course, either – in-person (found online at: https://dmv.ny.gov/pirp/classroom) or online (found online at: https://dmv.ny.gov/pirp/online)
- Send completed DMV course paperwork to the DA's office within 45 days of being accepted into the program

Again, please note there are some offenses that are not eligible for participation in traffic diversion. There are also varying fees associated with participation, depending on the offense.

Notably, the program as described above is limited to Broome County. A ticket received in another county may or may not be eligible for a different diversion program.

Article written by Sophie A. Bergman, Esq. For more information, contact Ms. Bergman at (607) 231-6761 or via email at sbergman@hhk.com.

PRACTICE AREAS

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LOCATIONS

BINGHAMTON, NY
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BOYNTON BEACH, FL
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