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California Clarifies Leave Rules for Organ and Bone Marrow Donors

California law provides job-protected leave for employees who donate an organ or bone marrow. Recently, Governor Jerry Brown signed into law S.B. 272 which clarifies applicable leave rules.

Background

The Michelle Maykin Memorial Donation Protection Act ([California Labor Code Sections 1508 – 1513](#)) requires employers with 15 or more employees to permit workers to take job-protected, paid leave for the purpose of organ or bone marrow donation. Under this law, an employer in California is required to grant an eligible employee up to 30 days leave for organ donation and five days leave for bone marrow donation in any one-year period. An employer may require the employee to take up to five days of earned but unused sick or vacation leave for bone marrow donation and up to two weeks of earned but unused sick or vacation leave for organ donation, unless that would violate a collective bargaining agreement. Leave entitlement for this purpose is not concurrent with leave taken pursuant to the federal Family and Medical Leave Act of 1993 (FMLA) or the California Family Rights Act (CFRA), but rather is in addition to FMLA and CFRA entitlements.

Upon expiration of an authorized bone marrow or organ donation leave, the employer generally must restore the returning employee to the same position he or she held when the leave began or to a position with equivalent seniority, pay and benefits. The law prohibits an employer from interfering with an employee taking organ or bone marrow donation leave and from discriminating against an employee for taking such leave or opposing an unlawful employment practice related to the leave. Aggrieved employees have a private right of action to enforce these provisions.

The New Law

[S.B. 272](#), recently signed into law by California Governor Jerry Brown, does not change existing law, but provides some important clarifications with respect to the current leave rules for organ and bone marrow donation. The bill amends California Labor Code Section 1510 to make clear that both the 30-day leave it provides for organ donation and the five-day leave it provides for bone marrow donation are measured in terms of business days, not calendar days. It further makes clear that the one-year period within which the leave is guaranteed is a rolling 12-month period that runs from the date the employee's leave begins.

Under existing law, a leave of absence for a donor does not constitute a break in continuous service for purposes of an employee's right to salary adjustments, sick leave, vacation, annual leave, or seniority. The bill clarifies that donor leave taken also is not a break in continuous service for the purpose of an employee's right to paid time off (PTO). The bill also includes PTO as accrued leave that an employer may require the employee to use for bone marrow or organ donation.

Existing law requires the employer to maintain and pay for group health plan coverage during any period that an employee takes leave for organ or marrow donation. The bill makes clear that the employer must maintain coverage in the same manner as if the employee had been actively at work during the leave period.

Finally, the bill clarifies that, although leave to donate may be taken in one or more periods, it cannot exceed a total of 30 business days for organ donation or five business days for bone marrow donation in any one-year period.

Conclusion

S.B. 272 provides some important clarifications that should make it easier for employers and employees alike to understand and comply with the donor leave law. Employers should train their managers, supervisors, and Human Resources personnel on how to handle employee requests and leaves for the purpose of organ or bone marrow donation. Employers also should review and, as appropriate, update their employee handbooks, leave policies, and associated forms for donor leaves.

Buck's consultants would be pleased to discuss the leave rules with you and assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.