



Benefit Trends

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Paid Leave for California Employees who are Organ and Bone Marrow Donors

LEGISLATIVE BRIEF

March 8, 2011

As of January 1, 2011, California employees who are organ donors are entitled to up to 30 days of paid leave in any one-year period, and those who are bone marrow donors are entitled to at least five days of paid leave. The new paid leave requirements apply to employers who have at least 15 employees in California. During the paid leave, the employer must continue to make its regular contributions toward the cost of the employee's group health coverage. This Benefits Compliance bulletin explains these provisions, which were added to the California Labor Code (Section 1508 et seq) by [Senate Bill 1304](#).

Compensation and Benefits During Leave

As noted above, during the protected leave an employer must continue to pay the employee's regular rate of compensation; however, an employer may require that an employee take up to five days of accrued sick or vacation leave for bone marrow donation and up to two weeks of accrued sick or vacation leave for organ donation, unless doing so would violate the provisions of an applicable existing collective bargaining agreement.

During the protected leave the employer also must continue to cover the employee (and family, if enrolled) under the employer's group health plan, and the employer must continue to pay its normal contribution for coverage under the group health plan.

Written Verification of Medical Necessity

An employer can require written verification from an employee that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow. An employer cannot interfere with an employee's right to take organ or bone marrow donation leave and cannot retaliate against an employee for taking such leave.

Additional Provisions of Donor Leave

The new donor leave entitlement is separate from, and not concurrent with, any leave entitlement under the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA).

Donor leave may be taken intermittently or as one continuous leave. Additionally, donor leave is not a break in continuous service for purposes of the employee's right to salary adjustments, sick leave, vacation, annual leave, or seniority.

An aggrieved employee may bring a civil action in superior court to seek enforcement of the new leave provisions. The court may issue an injunction or order any equitable relief it deems necessary.

Application to Collectively Bargained Employees

If a bargaining agreement entered into before January 1, 2011, provided for lesser leave rights than the new law requires, the employer is not required to comply with the new law until the bargaining agreement expires. Any bargaining agreements entered into on or after January 1, 2011, however, cannot diminish the leave rights provided by the new law. If a collective bargaining agreement provides greater leave rights than the new law requires, the employer must comply with the bargaining agreement.

Reinstatement Rights

An employer must reinstate an employee returning from donor leave to the same or an equivalent position as that held by the employee when the leave began, or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. The exception, however, is that an employer may elect not to reinstate an employee because of conditions unrelated to the fact that the employee was out on donor leave (e.g., if the employee's position would have been eliminated even if the employee had been actively at work).

Next Steps For Employers

Affected employers should take the following steps:

- Update leave policies and practices so they are in compliance with the new leave requirements,
- Develop a written verification form employees can use when they request donor leave,
- Update benefits policies and ensure that protected leave is not counted as a break in service,
- Train (or re-train) managers and supervisors on all types of California, federal and company leaves.

It is unlikely employers will have many employees requesting donor leave, since organ or bone marrow donation is far less common than the allowable reasons for FMLA or CFRA leave; however, employers should ensure that their policies and procedures are compliant with the new law. If you need assistance, call your Jenkins Account Team.

This only applies for California employees.

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If you have questions, contact Lisa-Klinger@Leavitt.com.

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