

New Wisconsin Law Provides Bone Marrow and Organ Donor Leave

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On April 1, 2016, the governor signed a new law providing qualifying employees with the right to take leave from work for purposes of serving as a bone marrow or organ donor. The law takes effect on July 1, 2016.

Like the Wisconsin FMLA, the law applies to employers in Wisconsin who employ at least 50 individuals on a "permanent basis," which includes private sector employers, as well as school districts and municipalities that employ 50 or more employees.

Under the new law, employees who have worked for the employer for 52 consecutive weeks and worked at least 1,000 hours in the last 52 weeks are eligible for leave to serve as a bone marrow or organ donor. The employee may take up to 6 weeks of leave in a 12-month period for the purpose of serving as a bone marrow or organ donor, and may only take leave for the period necessary for the employee to undergo the donation procedure and to recover from the procedure. The right to take donor leave is in addition to an employee's right to take leave under the FMLA laws. The donor leave is unpaid, but the employee may substitute paid or unpaid leave of any other type provided by the employer.

An employee who wishes to request donor leave must make a reasonable effort to schedule the bone marrow or organ donation so as to not unduly disrupt the employer's operations, subject to the approval of the donee's health care provider and must give the employer advance notice of the need for the leave in a reasonable and practicable manner.

As a condition of approving the leave, the employer may require medical certification that states the following: (1) the donee has a serious health condition that necessitates a bone marrow or organ transplant; (2) the employee is eligible and has agreed to be a bone marrow or organ donor for the donee; and (3) the amount of time expected to be necessary for the employee to recover from the donation procedure.

Like under the Wisconsin FMLA, an employee who takes donor leave must be returned to his or her former position, or if that position is not vacant, the employee must be returned to a position with equivalent pay, benefits, working shift, hours and other terms and conditions of employment. If the employee wishes to return to work prior to the end of the scheduled leave, the employer must return the employee to work within a reasonable time.

Employees who take donor leave are not entitled to any right, employment benefit or position to which they would not otherwise have been entitled had leave not been taken. Employees are also not entitled to the

accrual of any seniority or employment benefit during a donor leave. On the other hand, employers may not reduce or deny any benefit that accrued prior to the employee's leave.

Employers must maintain an employee's group health insurance benefits during the approved leave if the employee had coverage under the plan immediately before the leave.

The employer and employee may mutually agree that, during a period of recovery from a donation procedure, the employee will work in an alternative employment position. Any period of time that the employee works in alternative employment does not reduce the employee's leave entitlement.

Employees who claim a violation of the bone marrow or organ donor laws may file administrative actions similar to those authorized under the Wisconsin FMLA. As with the Wisconsin FMLA, employees have 30 days from the date of the alleged violation, or from the date the employee should reasonably have known of the violation, to file an action. A civil action for damages may also be commenced after the completion of an administrative action.

The new law states that employers must post, in one or more conspicuous places, a poster that will be issued by the Department of Workforce Development setting forth employee rights under the bone marrow and organ donor law. Employers who fail to do so may forfeit up to \$100 per offense. When contacted, the Department of Workforce Development did not have a specific timeframe for when the applicable poster would be issued.

Employers should prepare for the new leave by updating their handbooks and obtaining and posting the required poster when it becomes available.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.