

New Developments in Organ Donor Leave and EEO-1 Reporting

Wisconsin Bone Marrow and Organ Donation Leave Poster Now Available

Effective July 1, 2016, Wisconsin's Bone Marrow and Organ Donation Leave Act took effect, which provides qualifying employees with the right to take leave from work for the purposes of serving as a bone marrow or organ donor.

The new law requires that all employers with 50 or more employees display a copy of a poster in one or more conspicuous places. Employers with 25 or more employees are required to post their particular leave policy for bone marrow and organ donation leave. The penalty for not posting the poster is \$100 for each offense. A copy of the poster may be obtained from the Department of Workforce Development's website. [Click here to download a copy of the poster.](#)

It is also recommended that employers place a copy of their bone marrow and organ donor leave policy in their handbooks.

The donor leave law is very similar to the Wisconsin Family and Medical Leave Act. While there are no regulations published yet for the donor law, many of the definitions in the law are identical or similar to those in the WFMLA and it is likely the laws will be interpreted similarly.

The donor leave law applies to all employers in Wisconsin who employ at least 50 employees on a "permanent basis." However, only employees who have worked for the employer for 52 consecutive weeks and have 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 six weeks of leave in a twelve 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 their donation procedure and to recover from the procedure. It is likely that the "12 month period" during which leave is counted will be the calendar year; the anticipated regulations will likely clarify this point.

An employee who wishes to request donor leave must give notice of the need for leave in a reasonable and practicable manner and must schedule the donation procedure so that it does not unduly disrupt the employer's operations, subject to the approval of the donee's healthcare provider.

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.

Employees may substitute paid or unpaid time of any other type provided by the employer. 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 the leave not been taken. Employees are also not entitled to the accrual of any seniority or employment benefit during a donor leave. On the hand, employers may not reduce or deny any benefit that accrued prior to the employee's leave. In addition, 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 claim a violation of the bone marrow and organ donor leave law may file administrative complaints 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 a complaint.

This Bone Marrow and Organ Donation Law poster requirement serves as a reminder that employers who have not reviewed their handbooks or posters recently should do so as laws are frequently being added or modified.

Proposed Rule Would Require Reporting of Pay Data as Part of EEO-1 Reporting Beginning in 2017

Following up on an earlier proposal, the EEOC has issued a revised proposed rule that would require the reporting of summary pay data by many employers who are required to file an annual Employer Information Report (commonly known as the EEO-1 report). In general, the EEO-1 reporting requirement applies to private sector employers with 100 or more employees and certain federal contractors with 50 or more employees. State and local governments, primary and secondary school systems, institutions of higher education, Indian tribes, and tax-exempt private membership clubs other than labor organizations are excluded from EEO-1 reporting requirements. The proposed rule would apply only to employers with 100 or more employees who are subject to the EEO-1 reporting requirements.

The current EEO-1 report requires employers to provide information regarding ethnicity, race, and sex of employees organized by job category. The EEOC's current proposal would expand the reporting requirements to include the reporting of summary wage information for employees within each job category. The wage information would be based on W-2 pay. Employers would not be required to report individual salaries, but rather would report the number of employees who fall into 12 separate "pay bands." Employers would also be required to report hours worked data. For non-exempt employees, this reporting would be based on actual hours worked. For exempt employees, employers would be able to report based on an assumption of a 40 hour workweek for full-time employees (and a 20 hour workweek for part-time employees) or actual hours of work (if the employer already maintains accurate records of these hours).

The EEOC believes that collecting of summary pay information as part of the EEO-1 report will help to combat pay discrimination. In announcing the proposed rule, the EEOC cites recent studies that show persistent pay gaps based on sex, race, and ethnicity. According to the EEOC, the collection of pay information will help the EEOC improve its enforcement efforts to combat pay discrimination, identify trends, and help employers assess their pay policies and practices. The EEOC says that it will use EEO-1 pay data to better focus resources and investigations, not as the sole basis to find discrimination (although a finding of discrimination could come after an investigation).

The EEOC has proposed that the new rule would first be effective for the 2017 EEO-1 report, but it also proposes to extend the deadline for that report from September 30, 2017 to March 31, 2018 to provide employers and HRIS vendors with additional time to change their EEO-1 recordkeeping and reporting. The September 30, 2016 deadline and the existing form for 2016 EEO-1 reporting remains unchanged.

The EEOC's Press Release for the proposed rule can be found here: <https://www.eeoc.gov/eeoc/newsroom/release/7-13-16.cfm>. It includes a links to the proposed rule, a copy of the proposed reporting form, a Fact Sheet for Small Businesses, and a question-and-answer document. The EEOC is accepting comments on the proposed rule through August 15, 2016.

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