

Introduced by Senator DeSaulnier

February 19, 2010

An act to amend Section 19991.11 of the Government Code, and to add Part 5.5 (commencing with Section 1508) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1304, as introduced, DeSaulnier. Employment: leave and benefits.

Existing law requires that employees of the state who have exhausted all available sick leave be permitted to take a leave of absence with pay, not exceeding 30 days for the purpose of organ donation and not exceeding 5 days for bone marrow donation, as prescribed.

This bill would eliminate the requirement that a state employee exhaust all available sick leave prior to being entitled to the above-recited paid leaves of absence. This bill would also require private employers to permit employees to take similar paid leaves of absence for organ and bone marrow donation. The bill would require a private employer to restore an employee returning from leave for organ or bone marrow donation to the same position held by the employee when the leave began or an equivalent position. The bill would prohibit a private employer from interfering with an employee taking organ or bone marrow donation and from retaliating against an employee for taking such leave or opposing an unlawful employment practice related to organ or bone marrow donation leave. The bill would also create a private right of action for an aggrieved employee to seek enforcement of these provisions.

Vote: majority. **Appropriation:** no. **Fiscal committee:** yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19991.11 of the Government Code is
2 amended to read:

3 19991.11. (a) Subject to subdivision (b), an appointing power
4 shall grant to an employee, ~~who has exhausted all available sick~~
5 leave, the following leaves of absence with pay:

6 (1) A leave of absence not exceeding 30 days to ~~any~~ *an*
7 employee who is an organ donor in any one-year period, for the
8 purpose of donating his or her organ to another person.

9 (2) A leave of absence not exceeding five days to ~~any~~ *an*
10 employee who is a bone marrow donor in any one-year period, for
11 the purpose of donating his or her bone marrow to another person.

12 (b) In order to receive a leave of absence pursuant to subdivision
13 (a), an employee shall provide written verification to the appointing
14 power that he or she is an organ or bone marrow donor and that
15 there is a medical necessity for the donation of the organ or bone
16 marrow.

17 (c) Any period of time during which an employee is required
18 to be absent from his or her position by reason of being an organ
19 or bone marrow donor is not a break in his or her continuous
20 service for the purpose of his or her right to salary adjustments,
21 sick leave, vacation, annual leave, or seniority.

22 (d) If an employee is unable to return to work beyond the time
23 or period that he or she is granted leave pursuant to this section,
24 he or she shall be paid any vacation balance, annual leave balance,
25 or accumulated compensable overtime. The payment shall be
26 computed by projecting the accumulated time on a calendar basis
27 as though the employee was taking time off. If, during the period
28 of projection, the employee is able to return to work, he or she
29 shall be returned to his or her former position as defined in Section
30 18522.

31 (e) If the provisions of this section are in conflict with the
32 provisions of a memorandum of understanding reached pursuant
33 to Section 3517.5, the memorandum of understanding shall be
34 controlling without further legislative action, except that, if those
35 provisions of a memorandum of understanding require the
36 expenditure of funds, the provisions shall not become effective
37 unless approved by the Legislature in the annual Budget Act.

1 SEC. 2. Part 5.5 (commencing with Section 1508) is added to
2 Division 2 of the Labor Code, to read:

3

4 **PART 5.5. ORGAN AND BONE MARROW DONATION**

5

6 1508. This part shall be known and may be cited as the
7 Michelle Maykin Memorial Donation Protection Act.

8 1509. For purposes of this part, the following terms have the
9 following meanings:

10 (a) "Employee" and "employee benefits" have the same
11 meanings set forth in Section 1500.

12 (b) "Employer" means any person, partnership, corporation,
13 association, or other business entity that employs 15 or more
14 employees.

15 1510. (a) Subject to subdivision (b), an employer shall grant
16 to an employee the following paid leaves of absence:

17 (1) A leave of absence not exceeding 30 days to an employee
18 who is an organ donor in any one-year period, for the purpose of
19 donating his or her organ to another person.

20 (2) A leave of absence not exceeding five days to an employee
21 who is a bone marrow donor in any one-year period, for the purpose
22 of donating his or her bone marrow to another person.

23 (b) In order to receive a leave of absence pursuant to subdivision
24 (a), an employee shall provide written verification to his or her
25 employer that he or she is an organ or bone marrow donor and that
26 there is a medical necessity for the donation of the organ or bone
27 marrow.

28 (c) Any period of time during which an employee is required
29 to be absent from his or her position by reason of being an organ
30 or bone marrow donor is not a break in his or her continuous
31 service for the purpose of his or her right to salary adjustments,
32 sick leave, vacation, annual leave, or seniority.

33 (d) This part does not affect the obligation of an employer to
34 comply with a collective bargaining agreement or employee benefit
35 plan that provides greater leave rights to employees than the rights
36 provided under this part.

37 (e) The rights provided under this part shall not be diminished
38 by a collective bargaining agreement or employee benefit plan
39 entered into on or after January 1, 2011.

1 1511. An employer shall, upon expiration of a leave authorized
2 by this part, restore an employee to the position held by him or
3 her when the leave began or to a position with equivalent seniority
4 status, employee benefits, pay, and other terms and conditions of
5 employment. An employer may decline to restore an employee as
6 required in this section because of conditions unrelated to the
7 exercise of rights under this part by the employee.

8 1512. (a) An employer shall not interfere with, restrain, or
9 deny the exercise or the attempt to exercise a right established by
10 this part.

11 (b) An employer shall not discharge, fine, suspend, expel,
12 discipline, or in any other manner discriminate against an employee
13 who does either of the following:

- 14 (1) Exercises a right provided under this part.
- 15 (2) Opposes a practice made unlawful by this part.

16 1513. (a) An employee may bring a civil action in the superior
17 court of the appropriate county to enforce this part.

18 (b) The court may enjoin any act or practice that violates this
19 part and may order any equitable relief necessary and appropriate
20 to redress the violation or to enforce this part.