

Senate Bill No. 272

CHAPTER 147

An act to amend Section 1510 of the Labor Code, relating to employment.

[Approved by Governor August 1, 2011. Filed with
Secretary of State August 1, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 272, DeSaulnier. Leave of absence: organ donation.

Existing law requires an employer to grant a leave of absence to an employee who is an organ donor or a bone marrow donor. The leave of absence to an organ donor is up to 30 days in a one-year period. The leave of absence for a bone marrow donor is up to 5 days in a one-year period. The leave of absence for either donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority. As a condition of an employee's initial receipt of the leave of absence, an employer may require the employee to take a specified number of days of earned but unused sick or vacation leave, unless that would violate provisions of an applicable collective bargaining agreement.

This bill would provide that the days of leave are business days rather than calendar days, and that the one-year period is measured from the date the employee's leave begins and consists of 12 consecutive months. This bill would also provide that the leave of absence is not a break in the employee's continuous service for the purpose of his or her right to paid time off. This bill would further provide that the employer may condition the initial receipt of leave upon the employee's use of a specified number of earned but unused days for paid time off. Additionally, the bill would state that it is declaratory of existing law.

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

SECTION 1. Section 1510 of the Labor Code is amended to read:

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

(1) A leave of absence not exceeding 30 business days to an employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(2) A leave of absence not exceeding five business days to an employee who is a bone marrow donor in any one-year period, for the purpose of

donating his or her bone marrow to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(b) In order to receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to his or her employer 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.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, paid time off, annual leave, or seniority. During any period that an employee takes leave pursuant to subdivision (a), the employer shall maintain and pay for coverage under a group health plan, as defined in Section 5000(b) of the Internal Revenue Code of 1986, for the full duration of the leave, in the same manner the coverage would have been maintained if the employee had been actively at work during the leave period.

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

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

(f) An employer may require, as a condition of an employee's initial receipt of bone marrow or organ donation leave, that an employee take up to five days of earned but unused sick leave, vacation, or paid time off for bone marrow donation and up to two weeks of earned but unused sick leave, vacation, or paid time off for organ donation, unless doing so would violate the provisions of any applicable collective bargaining agreement.

(g) Notwithstanding existing law, bone marrow and organ donation leave shall not be taken concurrently with any leave taken pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.) or the Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(h) Leave provided for pursuant to this section may be taken in one or more periods, but in no event shall exceed the amount of leave prescribed in subdivision (a).

SEC. 2. The amendment of Section 1510 of the Labor Code made by this act does not constitute a change in, but is declaratory of, existing law.