

Maryland's New Organ and Bone Marrow Donation Leave – Have You Updated Your Policies to Comply?

By Jessica Summers

Take Away: *Effective October 1, 2019, employers with 15 or more employees in Maryland must provide eligible employees with unpaid leave to serve as organ or bone marrow donors. Leave provided under the new law is separate from, and cannot run concurrently with, any leave that the employee might also be entitled to under the federal Family Medical Leave Act (FMLA).*

Here's what employers need to know about the new organ donation law:

Which employees are eligible?

To be eligible for organ or bone marrow donation leave, an employee must have been employed by the employer for at least twelve months and worked at least 1,250 hours in the 12 months preceding the date on which the employee wants to start taking the leave.

How much leave is an eligible employee entitled to?

For organ donation – eligible employees may take up to 60 business days of leave in any 12 month period.

For bone marrow donation – eligible employees may take up to 30 business days of leave in any 12 month period.

Can the employer request verification from the employee?

Yes, employers can require eligible employees to provide a note from their physician verifying (1) that the employee will, in fact, be serving as a bone marrow or organ donor, and (2) that there is a medical necessity for the employee to make the donation.

How does organ and bone marrow donation leave interact with other leave rights?

The new law makes it very clear that the organ and bone marrow donation leave cannot run concurrently with FMLA leave. In other words, if an employee is eligible for both organ and bone marrow donation leave and FMLA leave – the FMLA leave balance will remain untouched during the period of organ and bone marrow donation leave. That said, there is nothing in the new law that prohibits employers from giving employees the option to use PTO, vacation, sick or other paid leave that the employer might provide concurrently with organ or bone marrow donation leave so that the employee can be paid for all or part of the leave instead of taking it unpaid.

What protections are afforded to an employee who takes organ or bone marrow donation leave?

There are a few key protections that the law gives employees who take this type of leave.

- First, the period of leave can't be considered a break in service for the purposes of benefits that are based on length of service.
- To the extent that the employee is enrolled in any group health plan sponsored by the employer, the employee's benefits, including any employer contribution toward the premiums, must remain the same as they would have been had the employee been working during the leave period (for those employers familiar with FMLA, this is the same rule that the FMLA uses).
- Employees returning from leave must be restored to the same or an equivalent position as the one they were in before they took leave, unless a situation unrelated to the employee taking the leave occurs that would have resulted in the employee losing his or her position even if he or she had not been on leave (for example a layoff or site closure).
- Employers are strictly prohibited from retaliating against employees for taking the leave or exercising any of their rights under the law.

The new law will be enforced by the Commission of Labor and Industry which has the authority to adopt further regulations to implement it. Covered employers are well advised to update their leave policies and make sure that any personnel responsible for reviewing or administering leave requests are aware and understand the new law.

If you need help updating your company's leave or any other policies, please don't hesitate to contact the employment attorneys at Paley Rothman.

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