

Bone Marrow/Organ Donor Leave

Bone Marrow Donation. Employees who have completed 90 days of employment at XXX and who need time off work to donate bone marrow to another person may receive up to five workdays off in a rolling 12-month period for bone marrow donation. XXX requires that you use up to five days of accrued but unused PTO¹, if you have it. If you do not have accrued PTO, the time off will be paid.

Organ Donation. Employees who have completed 90 days of employment at XXX and who need time off work to donate an organ to another person may receive up to 30 workdays off in a rolling 12-month period for organ donation. XXX requires that you use accrued but unused PTO, if you have it. If you do not have accrued PTO, the time off will be paid.

Medical Certification. Employees who need time off to donate bone marrow or an organ to another person must provide written verification that the employee will be a bone marrow donor or an organ donor and there is a medical necessity for the donation.

Employees returning from donor leave will be reinstated to the position held before the leave began, or to a position with equivalent seniority status, benefits, pay and other terms and conditions of employment. XXX may refuse to reinstate an employee if the reason for taking time off is unrelated to taking a donor leave.

Donor leave may be taken in one or more periods of time.

Benefits during a Donor Leave. A donor leave of absence runs concurrently with *Medical Disability Leave or Transfer*². An employee using bone marrow/organ donor leave may also qualify for XXX *Short-term Disability Insurance (STDI)* or *State Disability Insurance (SDI)* benefits.

¹ If your company doesn't have a PTO policy, substitute accrued sick leave or vacation.

² CA Medical Disability Leave or Transfer guidelines apply to employers of five or more.

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Approximately 26 states have some version of Bone Marrow/Organ Donor Leave. California's law requires:

1509. For purposes of this part, the following terms have the following meanings: (a) "Employee" and "employee benefits" have the same meanings set forth in Section 1500. (b) "Employer" means any person, partnership, corporation, association, or other **business entity that employs 15 or more employees.**

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 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. (2) A leave of absence not exceeding five 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. (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, 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. (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 or vacation leave for bone marrow donation and up to two weeks of earned but unused sick or vacation leave 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 California 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.

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

1512. (a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise a right established by this part. (b) **An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against an employee** who does either of the following: (1) Exercises a right provided under this part. (2) Opposes a practice made unlawful by this part.

1513. (a) An employee may bring a civil action in the superior court of the appropriate county to enforce this part. (b) The court may enjoin any act or practice that violates this part and may order any equitable relief necessary and appropriate to redress the violation or to enforce this.

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NEW 2011 DONOR LEAVE APPLIES TO CA EMPLOYERS OF 15 OR MORE

<http://www.shrm.org/LegalIssues/StateandLocalResources/StateandLocalStatutesandRegulations/Documents/donorleave>

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