

Legislature Expands Rights to Paid Leaves of Absences for Organ Donors

By Lisa V. Ryan

Beginning in 2011, employers with 15 or more employees must provide paid leaves of absence to organ or bone marrow donors. The Michelle Maykin Memorial Donation Protection Act now provides employees the right to take a paid leave of absence not exceeding 30 days in any one-year period, for the purpose of donating his or her organ to another person. The Act further provides for a protected paid 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.

The measure allows an employer to require that the employee use earned but unused sick or vacation leave for the five days permitted for a bone marrow transfer and up to two weeks of earned but unused sick or vacation leave for the up to 30 days permitted for an organ transplant. For this reason, employers should update their employee handbooks and leave policies to put employees on notice of any such requirement. However, the measure requires these employees to be paid for this leave of absence regardless of whether they have accrued paid time off available.

It is important to note that employers can not deem the "donor leave" a break in an employee's continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, health insurance, or seniority. Employers should be further cautioned that taking such donor leave of absence does not permit running FMLA/CFRA concurrently. Since the Act provides employees with broad return rights and legal remedies, employers should seek legal counsel when coordinating a donor leave of absence which has potential rights under other state and federal medical leave and disability accommodation laws.

This new law as well, as other employment legislation passed by the Legislature in 2010, will be discussed at Cook Brown's Annual Legal Update scheduled for January 20, 2011.