

Leave for Bone Marrow Donors and Organ Donors

Legislation enacted August 2001 (Chapter 214 of the Laws of 2001) amends the New York State Labor Law to authorize leave with pay without charge to accruals for State employees who are either bone marrow donors or organ donors.

Specifically Section 202-b of the Labor Law provides that any employee of the State of New York shall be allowed up to seven workdays of paid leave to undergo a medical procedure to donate bone marrow and up to thirty workdays of paid leave to serve as an organ donor. An employee is required to give at least 14 days prior written notice to the appointing authority of his/her intention to use leave under this section, unless there is a medical emergency attested to by a physician that would require the employee to undergo the medical procedure for which leave is sought within that 14-day notification period. This leave is available each time an employee serves as a bone marrow or organ donor and is in addition to any other leave allowed.

Under this provision, employees are eligible for paid leave without charge to accruals, for either full or partial days, while serving as either a bone marrow donor or an organ donor or recovering from the procedures involved. The leave with pay without charge to accruals includes any necessary travel time, as well as any medical testing or other procedures to determine bone marrow or organ donation compatibility.

The leave is available only to the extent that it conflicts with the employee's work schedule. Employees who undergo bone marrow and organ donation outside their regular work schedule, for example on a pass day, do so on their own time. Employees absent on a holiday for the purpose of bone marrow or organ donation are considered to be observing the holiday and are not granted compensatory time off for bone marrow or organ donation for the holiday.

For employees on part-time or alternative work schedules, a work day is based on the length of the employee's scheduled work day. For example, a half-time employee who is scheduled to work four hours a day and a full-time employee on a compressed workweek who is scheduled to work 10 hours per day four days a week have each used one workday of entitlement under this section if absent for a full work shift.

If an employee uses the leave under this section in less than a full day unit, the leave is calculated as a fraction of the employee's work day. For example, a full-time employee who works eight hours a day and who is absent for four hours for bone marrow donation has used one half-day of his/her entitlement.

The appointing authority may require verification by a physician regarding the purpose and length of each leave requested by the employee under this section.

Chapter 214 of the Laws of 2001 added Section 202-b to the Labor Law, effective August 29, 2001 and was amended by Chapter 465 of the Laws of 2001, effective November 13, 2001, to read as follows:

202-b. Leave for organ or bone marrow donation granted to state employees

1. Any employee of the state of New York shall be allowed up to seven days paid leave to undergo a medical procedure to donate bone marrow and up to thirty days paid leave to serve as an organ donor, provided, however, that an employee of the state of New York shall provide his or her employer with not less than fourteen days prior written notice of an intention to utilize such leave, unless there exists a medical emergency, attested to by a physician, which would require the employee to participate in the medical procedure or organ donation for which the leave is sought within the fourteen day notification period. Such leave shall be in addition to any other sick or annual leave allowed. The employer may require verification by a physician for the purpose and length of each leave requested by the employee to donate bone marrow.
2. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section for the purpose of undergoing a medical procedure to donate bone marrow or serve as an organ donor.
3. The provisions of this section shall not prevent an employer from providing leave for bone marrow or organ donations in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit otherwise provided by law.