

February 26, 2010

California Kin Care Law Does Not Apply to Unlimited Sick Leave Policies

The California Supreme Court has ruled in [McCarther v. Pacific Telesis Group](#) that Labor Code section 233 – commonly known as California’s “kin care” statute -- does not apply to sick leave policies that provide for an uncapped or unlimited number of compensated days off.

The case involved Pacific Telesis’s “sickness absence” policy, contained in the union contract covering the company’s workers. The policy provided compensation for up to five consecutive days off in any seven-day period for absences due to the employee’s own illness or injury – but *not* for absences to care for an ill family member. The policy did not cap the number of days off for illness or injury, and employees did not earn or accrue a particular number of sick days. Thus, for example, an employee who worked Monday-Friday, was absent for an entire workweek due to illness, returned to work the following Monday morning, and became ill during the day on Monday, could leave work and be absent for five more continuous days with full pay. However, employees who took too many days off were subject to discipline under an attendance management program, which tracked many types of absences, including most sick days.

Two employees who took time off to care for ill family members and were not compensated for the absences filed a class action lawsuit, charging that Pacific Telesis violated Labor Code section 233 by failing to cover kin care absences under the sickness absence policy. Labor Code section 233 requires employers that provide paid sick leave to permit employees to use up to half of the time accrued in a calendar year to care for an ill family member (child, parent, spouse, or domestic partner). The statute defines “sick leave” as “accrued increments of compensated leave.”

Pacific Telesis argued that its “sickness absence” policy was not subject to the kin care statute because employees did not incrementally *accrue* or earn sick leave; essentially, the time off was unlimited, subject to the attendance disciplinary constraints. A California Court of Appeal, however, disagreed, holding that section 233 applied to the Pacific Telesis policy.

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The California Supreme Court reversed, ruling that section 233 is applicable only to policies that “provide a measurable, banked amount of sick leave.” Therefore, employers with sick leave policies that provide an uncapped number of compensated days off due to illness and have no measurable sick leave accrual, like Pacific Telesis’s unlimited “sickness absence” policy, do not have to allow employees to use part of that unlimited time for kin care purposes. As the court pointed out, the section 233 requirement to permit half of accrued sick days to be used for kin care could not sensibly be applied where there is no measurable sick leave accrual, as it would be impossible to determine the amount of kin care leave to which an employee might be entitled.

While this decision is favorable for employers, its reach is limited because most employers do not have unlimited sick leave policies. The case, however, serves as a good reminder for employers who do have sick leave accrual policies covered by Labor Code section 233 to ensure that such policies comply with the statute.

For over a decade, Miller Law Group has devoted its practice exclusively to representing business in all aspects of California employment law and related litigation. If you have questions about these new developments or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

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