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AB-1223 Living organ donation. (2019-2020)

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Assembly Bill No. 1223

CHAPTER 316

An act to amend Sections 89519.5 and 92611.5 of the Education Code, to amend Section 19991.11 of the Government Code, to add Sections 10110.8 and 10233.8 to the Insurance Code, and to amend Section 1510 of the Labor Code, relating to organ donation.

[Approved by Governor September 20, 2019. Filed with Secretary of State September 20, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1223, Arambula. Living organ donation.

Existing law, the Michelle Maykin Memorial Donation Protection Act, requires a private employer to permit an employee to take a leave of absence with pay, not exceeding 30 business days in a one-year period, for the purpose of organ donation. Existing law requires a public employer to permit a public employee to take a similar paid leave of absence for organ donation, if the employee has exhausted all available sick leave.

This bill would require a private or public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, for the purpose of organ donation. The bill would require a public employee to first exhaust all available sick leave before taking that unpaid leave.

Existing law provides for the regulation of disability insurance, life insurance, and long-term care insurance by the Department of Insurance and prescribes various requirements and conditions governing the issuance of those insurance policies or certificates in the state.

This bill would prohibit a life or disability insurance policy other than health insurance, or a long-term care insurance policy or certificate issued, amended, renewed, or delivered on or after January 1, 2020, from declining or limiting coverage of a person, charging a person a different rate for the same coverage, or otherwise discriminating in the offering, issuance, cancellation, amount of coverage, price, or any other condition of the insurance policy for a person based solely and without any additional actuarial risks upon the status of that person as a living organ donor. The bill would require an insurer, with respect to any health condition other than being a living organ donor, to subject a person who is a living organ donor to the same actuarial or other standards as persons who are not living organ donors.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 89519.5 of the Education Code is amended to read:

89519.5. (a) Subject to subdivision (c), the trustees shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence, not exceeding 30 days in a one-year period, to an employee who is an organ donor, for the purpose of donating the employee's organ to another person.

(2) A leave of absence, not exceeding five days in a one-year period, to an employee who is a bone marrow donor, for the purpose of donating the employee's bone marrow to another person.

(b) Subject to subdivision (c), the trustees shall grant an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, to an employee who has exhausted all available sick leave and is an organ donor, for the purpose of donating the employee's organ to another person.

(c) To receive a leave of absence pursuant to subdivision (a) or (b), an employee shall provide written verification to the trustees that the employee is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(d) Any period of time during which an employee is required to be absent from the employee's position by reason of being an organ or bone marrow donor is not a break in the employee's continuous service for the purpose of the employee's right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(e) If an employee is unable to return to work beyond the time or period that the employee is granted leave pursuant to this section, the employee shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, the employee shall be returned to the employee's former position.

(f) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 92611.5 of the Education Code is amended to read:

92611.5. (a) If the Regents of the University of California adopt the provisions of this section, by appropriate resolution, and subject to subdivision (c), the regents shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence, not exceeding 30 days in a one-year period, to an employee who is an organ donor, for the purpose of donating the employee's organ to another person.

(2) A leave of absence, not exceeding five days in a one-year period, to an employee who is a bone marrow donor, for the purpose of donating the employee's bone marrow to another person.

(b) If the Regents of the University of California adopt the provisions of this section, by appropriate resolution, and subject to subdivision (c), the regents shall grant an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, to an employee who has exhausted all available sick leave and is an organ donor, for the purpose of donating the employee's organ to another person.

(c) To receive a leave of absence pursuant to subdivision (a) or (b), an employee shall provide written verification to the regents that the employee is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(d) Any period of time during which an employee is required to be absent from the employee's position by reason of being an organ or bone marrow donor is not a break in the employee's continuous service for the purpose of the employee's right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(e) If an employee is unable to return to work beyond the time or period that the employee is granted leave pursuant to this section, the employee shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, the employee shall be returned to the employee's former position.

(f) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding

shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 19991.11 of the Government Code is amended to read:

19991.11. (a) Subject to subdivision (c), an appointing power shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence, not exceeding 30 days in a one-year period, to an employee who is an organ donor, for the purpose of donating the employee's organ to another person.

(2) A leave of absence, not exceeding five days in a one-year period, to an employee who is a bone marrow donor, for the purpose of donating the employee's bone marrow to another person.

(b) Subject to subdivision (c), an appointing power shall grant an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, to an employee who has exhausted all available sick leave and is an organ donor for the purpose of donating the employee's organ to another person.

(c) In order to receive a leave of absence pursuant to subdivision (a) or (b), an employee shall provide written verification to the appointing power that the employee is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(d) Any period of time during which an employee is required to be absent from the employee's position by reason of being an organ or bone marrow donor is not a break in the employee's continuous service for the purpose of the employee's right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(e) If an employee is unable to return to work beyond the time or period that the employee is granted leave pursuant to this section, the employee shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, the employee shall be returned to the employee's former position as defined in Section 18522.

(f) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 4. Section 10110.8 is added to the Insurance Code, to read:

10110.8. (a) A life or disability insurance policy other than health insurance, as defined in Section 106, issued, amended, renewed, or delivered on or after January 1, 2020, shall not do any of the following based solely and without any additional actuarial risks upon the status of a person as a living organ donor:

(1) Refuse to insure, or refuse to continue to insure, the person under a life or disability insurance policy.

(2) Limit the amount, extent, or kind of coverage available to the person under a life or disability insurance policy.

(3) Charge the person a different rate for the same coverage under a life or disability insurance policy.

(4) Otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or any other condition of a life or disability insurance policy for the person.

(b) With respect to any health condition other than being a living organ donor, a person who is a living organ donor shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as persons who are not living organ donors.

(c) For purposes of this section, "living organ donor" means an individual who has donated all or part of an organ and is not deceased.

SEC. 5. Section 10233.8 is added to the Insurance Code, to read:

10233.8. (a) A long-term care insurance policy or certificate issued, amended, renewed, or delivered on or after January 1, 2020, shall not do any of the following based solely and without any additional actuarial risks upon the status of a person as a living organ donor:

- (1) Refuse to insure, or refuse to continue to insure, the person under a long-term care insurance policy or certificate.
- (2) Limit the amount, extent, or kind of coverage available to the person under a long-term care insurance policy or certificate.
- (3) Charge the person a different rate for the same coverage under a long-term care insurance policy or certificate.
- (4) Otherwise discriminate in the offering, issuance, cancellation, amount of coverage, price, or any other condition of a long-term care insurance policy or certificate for the person.

(b) With respect to any health condition other than being a living organ donor, a person who is a living organ donor shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as persons who are not living organ donors.

(c) For purposes of this section, "living organ donor" means an individual who has donated all or part of an organ and is not deceased.

SEC. 6. Section 1510 of the Labor Code is amended to read:

1510. (a) Subject to subdivision (c), an employer shall grant to an employee the following paid leaves of absence:

(1) A leave of absence, not exceeding 30 business days in a one-year period, to an employee who is an organ donor, for the purpose of donating the employee's organ to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(2) A leave of absence, not exceeding five business days in a one-year period, to an employee who is a bone marrow donor, for the purpose of donating the employee's bone marrow to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(b) Subject to subdivision (c), an employer shall grant an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, to an employee who is an organ donor, for the purpose of donating the employee's organ to another person. The one-year period is measured from the date the employee's leave begins and shall consist of 12 consecutive months.

(c) In order to receive a leave of absence pursuant to subdivision (a) or (b) an employee shall provide written verification to the employer that the employee is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(d) Any period of time during which an employee is required to be absent from the employee's position by reason of being an organ or bone marrow donor is not a break in the employee's continuous service for the purpose of the employee's right to salary adjustments, sick leave, vacation, paid time off, 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, in the same manner the coverage would have been maintained if the employee had been actively at work during the leave period.

(e) 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.

(f) 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.

(g) 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 leave, vacation, or paid time off for bone marrow donation and up to two weeks of earned but unused sick leave, vacation, or paid time off for organ donation, unless doing so would violate the provisions of any applicable collective bargaining agreement.

(h) 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 Moore-Brown-Roberti Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code).

(i) Leave provided for pursuant to this section may be taken in one or more periods, but in no event shall exceed the amount of leave prescribed in subdivisions (a) and (b).