

Pennsylvania Employees, Organs, and the FMLA – Oh My!

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Employee question of the day for HR: “I need time off because I’m donating a kidney.” You’re probably wondering: “How do I respond to this request? Is this incredibly generous employee entitled to protected leave?”

Whether organ donation qualifies for federal Family Medical Leave Act (“FMLA”) leave is typically dependent on whether there is continuing treatment or an overnight stay in the hospital. But effective on or about June 26, 2021, if you are a covered employer under the FMLA, the employee is eligible for FMLA, *and* the employee works in Pennsylvania, then the answer is yes! Last week, Pennsylvania Governor Tom Wolf signed the Living Donor Protection Act (“LDPA”) into law, adding Pennsylvania to a growing list of states providing statutory leave to employees who donate all or part of an organ or tissue.

Specifically, the LDPA requires FMLA employers to afford FMLA-eligible employees who are living organ donors with FMLA leave and protections so they can take time off work to undergo preparation for and donation of an organ or tissue, and to recover from the surgery. The LDPA also requires employers to provide similar leave for an eligible employee to care for a spouse, child, or parent with a serious medical condition for the preparation and recovery necessary for surgery related to organ or tissue donation, or if the spouse, child, or parent is the donor.

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National Law Review, Volume XI, Number 124

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