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## **California Supreme Court Holds “Kin Care” Provision Not Applicable to Uncapped Sick Leave Policies**

California law does not require employers to provide paid sick leave. Nonetheless, many employers choose to do so. Labor Code Section 233 (commonly referred to as the “kin care” provision), requires employers who offer accrued paid sick leave policies to permit employees to use at least one-half of their annual sick leave accrual to care for the illness of a child, parent, spouse, domestic partner, or child of a domestic partner. Employers should be aware, however, that not all sick leave policies are subject to the requirements of the kin care provision.

In a unanimous decision, the California Supreme Court recently held in McCarthy v. Pacific Telesis Group that the kin care provision of Labor Code Section 233 does not apply to paid sick leave policies with an uncapped amount of leave. Pacific Telesis had a policy that allowed employees to be paid for sick time up to five consecutive days in a seven-day period, with the entitlement renewed each time the employee returns from an absence. The policy had no cap on the total number of days of paid sick leave and employees did not earn, vest, or accrue any particular number of paid sick days in a year. The Supreme Court found that the kin care provision only applies to employers who provide “accrued increments of compensated leave” and was not meant to apply to all types of sick leave policies.

The Court concluded that Labor Code Section 233 does not apply to sick leave policies like the one used by Pacific Telesis, where employees do not accrue paid sick leave and there is no cap on the amount of leave.

This significant case offers clarity and guidance for employers with uncapped and non-accruing sick leave policies. However, the majority of California employers either have a more traditional sick leave policy (where employees accrue sick leave or there is an annual cap on the amount of paid sick leave), or simply combine vacation and sick time into an accrued “paid time off” benefit that can be used for vacation or illness. Employers with more traditional sick leave policies must still comply with Labor Code Section 233 and permit employees to use at least half their annual accrued sick leave to care for an ill family member. Also, the California Labor Commissioner has stated that paid time off policies are also

subject to the requirements of the kin care and non-discrimination provisions of the Labor Code. Employers generally may impose the same conditions and restrictions on the use of sick leave for family members as apply to an employee's use of sick leave for her own illness. For example, employers can require that employees provide medical certification of an illness or comply with reasonable notification rules if they intend to miss work due to either their own illness or that of a family member.



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