

"[CHAPTER 398A]  
LEAVE OF ABSENCE FOR ORGAN, BONE MARROW, OR  
PERIPHERAL BLOOD STEM CELL DONATION

Section

- 398A-1 Definitions
- 398A-2 Inapplicability
- 398A-3 Leave requirement
- 398A-4 Restoration of employment
- 398A-5 Employee rights
- 398A-6 Civil action

" **[\$398A-1] Definitions.** As used in this chapter:

"Employee" means a person who may be permitted, required, or directed by an employer for wages or pay to engage in any employment and who has been employed by that employer for at least one year immediately preceding the commencement of leave provided under this chapter.

"Employee benefits" means all benefits, other than salary and wages, provided or made available to an employee by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

"Employer" means any private:

- (1) Person;
- (2) Partnership;
- (3) Corporation;
- (4) Association; or
- (5) Other business entity,

that employs fifty or more employees. [L 2014, c 161, pt of §1]

" **[\$398A-2] Inapplicability.** This chapter shall not apply to any leave of absence provided to any public employee serving as an organ or bone marrow donor pursuant to section 78-23.6. [L 2014, c 161, pt of §1]

" **[\$398A-3] Leave requirement.** (a) Subject to subsection (d), an employer shall provide to an employee leave of absence not exceeding:

- (1) Seven days each calendar year to serve as a bone marrow donor or peripheral blood stem cell donor; and
- (2) Thirty days each calendar year to serve as an organ donor;

provided that the employee shall submit written verification to the employer that the employee is an organ donor, bone marrow donor, or peripheral blood stem cell donor and that there is a medical necessity for the donation of the organ, bone marrow, or peripheral blood stem cells.

(b) Any period of time during which an employee is required to be absent from work to serve as an organ donor, bone marrow donor, or peripheral blood stem cell donor shall not constitute 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. During any period that an employee takes leave pursuant to subsection (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, as amended, for the full duration of the leave, in the same manner as the coverage would have been

maintained if the employee had been actively at work during the leave period.

(c) This chapter shall not affect the obligation of an employer to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this chapter.

(d) An employer may require as a condition of an employee's initial receipt of leave provided pursuant to this section that the employee take up to three days of earned but unused sick leave, vacation, or paid time off, or unpaid time off, for bone marrow or peripheral blood stem cell donation and up to two weeks of earned but unused sick leave, vacation, or paid time off, or unpaid time off, for organ donation, unless doing so would violate the provisions of any applicable collective bargaining agreement.

(e) Notwithstanding any other provision to the contrary, leave provided pursuant to this section shall not be taken concurrently with any leave taken pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.) or chapter 398.

(f) Leave provided pursuant to this section may be taken in one or more periods, but in no event shall exceed the amount of leave prescribed in subsection (a). [L 2014, c 161, pt of §1]

" **[\$398A-4] Restoration of employment.** An employer, upon expiration of a leave authorized by this chapter, shall restore an employee to the position held by the employee when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. An employer may decline to restore an employee as required in this section because of conditions unrelated to the employee's exercise of rights under this chapter. [L 2014, c 161, pt of §1]

" **[\$398A-5] Employee rights.** (a) An employer shall not interfere with, restrain, or deny the exercise of, or an attempt to exercise, a right established by this chapter.

(b) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against an employee who:

- (1) Exercises a right provided under this chapter; or
- (2) Opposes a practice made unlawful by this chapter. [L 2014, c 161, pt of §1]

" **[\$398A-6] Civil action.** An employee may bring a civil action to enforce this chapter. The court may enjoin any act or practice that violates this chapter and may order any equitable

relief necessary and appropriate to redress the violation or to enforce this chapter. [L 2014, c 161, pt of §1]