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The California Supreme Court Clarifies California's "Kin Care" Law

In the recent case of *McCarther v. Pacific Telesis Group*, the California Supreme Court clarified the scope of California Labor Code § 233, California's "kin care" law. California Labor Code § 233 generally requires any employer that allows its employees to "accrue" sick leave to allow those employees to use a portion of that sick leave to attend to the illness of a child, parent, spouse, or domestic partner. In *McCarther*, the California Supreme Court clarified that California Labor Code § 233 does not universally apply to all paid sick leave policies, only those policies under which employees "accrue" or "bank" sick days. The Court specifically held that the statute does not apply to policies that provide for an uncapped number of compensated sick days. Employers with those policies do not have to provide any compensated time off for "kin care."

Plaintiffs Kimberly McCarther and Juan Huerta were employees of Defendants SBC Services, Inc. and Pacific Bell Telephone Company, respectively. Under their Collective Bargaining Agreement, Defendants had a sick leave policy that compensated employees for up to five consecutive days of work missed due to illness or injury. After an employee returned to work for any period of time after an absence, the sick leave policy could be triggered again and the employee could be compensated for another five days missed due to illness or injury. The employees did not "bank" or "accrue" any sick days, rather they could simply take paid days off when needed. While there was no limit or cap to the number of compensated sick days an employee could receive under the sick leave policy, employees were subject to an attendance policy that limited the total number of days an employee could miss per year, including absences for sick days. Defendants had no policy of paying employees for absences taken to care for ill family members.

Plaintiffs Kimberly McCarther and Juan Huerta both missed work to care for ill family members and, pursuant to Defendants' policy, were not paid for those absences. They filed suit claiming that Defendants violated Labor Code § 233 by not paying them for the missed "kin care" days. The California Supreme Court rejected their claims.

The Supreme Court held that Labor Code § 233 does not apply to all compensated sick leave policies. It only applies to those sick leave policies where employees accrue a measurable, banked amount of sick leave. The Court focused on Labor Code § 233's limited definition of "sick leave" as "accrued increments of compensated leave provided." The Court found that the plain meaning of "accrued" was "to accumulate over time" and that under Defendants' sick leave policy, employees did not accumulate sick leave. They were merely allowed to take sick days off whenever needed. Consequently, the Court found that Defendants' policy did not fall within

Labor Code § 233's limited definition of "sick leave" and was not covered by the statute. The Court also found that it untenable to interpret the statute, which required employers to provide "an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement" for "kin care," as applying to Defendants' policy, which provided an unlimited amount of sick leave. The Court explained that it would be impossible to determine how much of that unlimited amount of sick leave an employee would accrue in a six month period and, therefore, it would be impossible to determine how much "kin care" Defendants would have to provide. Based on those findings, the Court found that Labor Code § 233 did not apply to Defendants' policies and Defendants were under no obligation to pay Plaintiffs for time missed for "kin care."

McCarther should serve as a reminder that, in certain circumstances, California law requires employers to provide employees with compensated time off for "kin care." Employers are encouraged to review their policies in light of *McCarther* to ensure that they are in compliance with current California law.