

The Cancer Legal Resource Center CHRONICLE

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Taking Time Off of Work Under the Family and Medical Leave Act

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When you, or someone in your family, has a serious illness like cancer, you may need to take time off of work to get treatment or to care for your loved one. The Family and Medical Leave Act (FMLA) is a federal law that guarantees up to 12 weeks¹ of job and benefit-protected leave in a 12 month period² for qualifying employees. FMLA leave can be taken for your own serious illness³, or for that of a spouse, child, or parent. In California, you can also take leave to care for your domestic partner. FMLA leave can be taken all at once or as needed. It can be one day per week, one week a month, one month at a time, or any combination of shorter leave periods that a person needs.

Maintaining income and health benefits during FMLA leave

The FMLA does not require that your employer continue to pay you while you are on leave. However, if you have unused paid time off (vacation or sick leave) you can use those benefits in order to continue receiving pay while you are on FMLA leave. In fact, employers will often require you to use your paid time off (PTO) concurrently with your FMLA. If you do not have any PTO available through your employer, or if you have used up your PTO, you

may be eligible for short term disability benefits. Disability benefits provide you with a percentage of your previous income while you are unable to work due to a disability. Some employers provide disability benefits to their employees. Union members often have disability benefits available through their union. The State of California also provides short term disability benefits (known as State Disability Insurance or SDI) to people who have paid SDI taxes during the year prior to their disability.

During FMLA leave, an employer must continue to provide health benefits if they were providing them prior to the leave, and must continue to pay whatever portion of the premiums they were paying prior to the leave. The employee is still responsible for any contribution they were making toward their health insurance premiums before their leave.

Who is eligible for FMLA leave?

In order to qualify for leave under the FMLA, you have to work for an employer that has 50 or more employees within 75 miles of where you work. Many employers, such as major corporations, have multiple worksites (factories or offices, for example). So, consider whether your employer has 50 or more employees within a 75 mile radius of your worksite.

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CLRC
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Another requirement for FMLA leave is your work history. You must have worked for your current employer a minimum of 12 months (although the 12 months do not have to be consecutive) and a minimum of 1250 hours (a little more than part time if worked over an entire year) during the previous 12 months.

Employers' responsibilities

Your employer is required to give you information about your rights and responsibilities under the FMLA when you take FMLA leave. Your employer cannot terminate your employment or otherwise punish you for taking FMLA leave. When you return from FMLA leave your employer must allow you to return to the same job you had prior to leave, or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

Once your 12 weeks have been exhausted for the 12 month period, the employer is not obligated to provide additional leave under the FMLA. However, you may be entitled to a definite period of additional leave time as a reasonable accommodation under the Americans with Disabilities Act (ADA).

An employer can still terminate your employment while you're on leave if they would have made the same decision even if you had not been on leave. For example, if your entire department was laid off while you were on leave, you would not be entitled to your job just because you were on leave.

Employee's responsibilities

The employee must provide 30 days advance notice when the need for leave is foreseeable. If the need for leave was not foreseeable, then the employee must give notice as soon as is practicable. This generally needs to be within one to two days of learning of the need for the leave.

The employer may ask the employee to obtain certification from a medical provider verifying the need for the employee to take the leave for themselves or for a family member. At the end of the leave the employer may require the employee to obtain a certification of fitness to return to work, if the leave was due to the employee's own illness.

For more information, call 866-843-2572 or visit www.cancerlegalresourcecenter.org.

¹ Families of military members are now entitled to take up to 26 weeks of leave to care for spouse, child, parent or next of kin who is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy. Family members may also be entitled to time off when an Armed Services member has been called to active duty.

² Employers are given some flexibility to decide how the 12 month period will be calculated. Some employers use a calendar year (Jan. 1 – Dec. 31). Others calculate the 12 month period from the day the employee began employment. However the employer chooses to calculate the 12 months, they must be consistent for all employees.

³ Leave can also be taken for the birth and care of a newborn child or for placement of a child for adoption or foster care. ❖

Meeting the Members of the CLRC Professional Panel:

Gary B. Ross, Esq. & Andrew D. Morrison, Esq.

By: Laura Urias, Esq.
Staff Attorney, Cancer Legal Resource Center

Gary Ross and Andrew Morrison have been volunteer panel attorneys with the Cancer Legal Resource Center (CLRC) since 1999. Mr. Ross and Mr. Morrison have their own law firm, Ross and Morrison, which specializes in labor relations and employment law, both as advocates and as neutral third parties.

The firm specializes in handling wrongful termination claims and claims alleging discrimination; sexual harassment; and whistle blowing. Mr. Morrison and Mr. Ross have prevailed in landmark decisions before the California Supreme Court and have appeared in Federal and State Courts, both at the trial and appellate levels. They have resolved matters through arbitration, mediation, and other forums for alternative dispute resolution. The firm resolves claims brought by or through the Federal Equal Employment Opportunity Commission (EEOC); the State Labor Commissioner; and other administrative agencies which regulate the employment relationship.

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Where We'll Be. . .

We'll be at these events coming soon. If you would like more information, please contact the CLRC.

MARCH 2009

EVENT: Komen Orange County Breast Health Symposium
 DATE: March 21, 2009
 PLACE: Anaheim Marriott, 700 W. Convention Way, Anaheim
 TIME: 8:00 a.m. to 2:00 p.m.

MAY 2009

EVENT: 8th Annual Women's Health Day Laguna Beach Community Clinic
 DATE: May 16, 2009
 PLACE: Main Beach, Laguna Beach
 TIME: 9 a.m. to 1 p.m.

SEPTEMBER 2009

EVENT: Komen Orange County Race for the Cure®
 DATE: September 27, 2009
 PLACE: Fashion Island, Orange County
 TIME: 7:30 a.m. to 1 p.m.

OCTOBER 2009

EVENT: The Women's Conference
 DATE: October 27, 2009
 PLACE: Long Beach Convention Center – 300 E. Ocean Blvd., Long Beach
 TIME: 7 a.m. to 7 p.m.



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Visit www.CancerLegalResourceCenter.org to learn more about our staff!

When asked why he volunteers with the CLRC Mr. Ross responded, "Because advocating on behalf of cancer patients is the most gratifying part of our practice -- particularly as it relates to a patient's job. A person's work status take[s] on great significance after a cancer diagnosis. Work helps define the person by something other than his or her illness. Thus, when a patient's job is put in jeopardy, it not only compounds the stress, it undermines one of the key sources of stability and continuity. As a consequence, safeguarding the workplace rights of cancer patients (medical leave, the right to an accommodation, the right to enjoy job security) is a unique way for us to give back by doing good work for those who are in need of support at a key moment in their life."

Both Mr. Ross and Mr. Morrison have been lecturers at Loyola Law School, teaching work place laws and rights to students. Mr. Ross has practiced law since 1985. He earned his B.A. in history at UCLA and his J.D. at USC. Mr. Ross was named a Southern California Super Lawyer in 2007 and 2008. Mr. Morrison has practiced law since 1989. He earned his B.A. in Mathematics at the University of California, Santa Cruz and later earned his J.D. at Loyola Law School.

Despite their busy and hectic schedules, Mr. Morrison and Mr. Ross always make the time to speak with CLRC callers. Callers who are referred to their firm can expect a prompt response. People facing cancer are often overwhelmed and the knowledge that experienced employment attorneys are available to guide them through their issue allows people to focus on what really matters: recovering.

The compassion and dedication both panel attorneys demonstrate to the cancer community is evident in the impression they leave behind with the people they have helped. A CLRC caller from the Inland Empire was very thankful for the help she received and when asked about her experience working with Mr. Morrison she stated,

"What most impressed me with Mr. Andrew Morrison was his compassion, wisdom, and integrity. He truly became a lawyer I could trust, and has continued to put forth numerous hours into helping me fight this battle over cancer discrimination at my employment."

Mr. Ross and Mr. Morrison continue to be an invaluable resource to so many of the CLRC's callers. Please join us in thanking them for their service. ❖

Getting to know . . . the Cancer Legal Resource Center



The Cancer Legal Resource Center (CLRC), a joint program of the Disability Rights Legal Center and Loyola Law School, is a non-profit organization. The CLRC provides services throughout the United States. Founded in 1997, the CLRC's mission is to provide information resources on cancer-related legal issues to people coping with cancer. ❖

Cancer-Related Resources

For employment related questions:

Equal Employment Opportunity Commission
(213) 894-1000 or (800) 669-4000
www.eeoc.gov

California Dept. of Fair Employment & Housing
(714) 558-4266 or (800) 884-1684
www.dfeh.ca.gov

Job Accommodation Network (JAN)
(800) 526-7234 www.jan.wvu.edu

For Family & Medical Leave Act (FMLA) questions:

U.S. Department of Labor
(626) 966-0478 or (866) 487-9243
www.dol.gov/dol/topic/benefits-leave

For State Disability Insurance (SDI) questions:

California Employment Development Department
(800) 480-3287 www.edd.ca.gov

For Social Security Disability Insurance (SSDI) & Supplemental Security Income (SSI) questions:

Social Security Administration
(800) 772-1213 www.ssa.gov

For COBRA questions:

U.S. Department of Labor
Employee Benefits Security Administration
(866) 275-7922 www.dol.gov/ebsa/

For Cal-COBRA (CA version of COBRA) and HIPAA questions:

California Department of Managed Health Care
(888) 466-2219 www.dmhca.ca.gov

For insurance questions:

California Department of Insurance
(800) 927-4357 www.insurance.ca.gov

For major risk Insurance questions:

Major Risk Medical Insurance Program (MRMIP)
(800) 289-6574 www.mrmib.ca.gov/mrmip

For Health Insurance Premium Payment Program questions:

Department of Health Services
(800) 952-5294 or (866) 298-8443

For Women's Health and Cancer Rights Act questions:

Employee Benefits Security Administration
(626) 229-1000 or (866) 275-7922

For Medicare questions:

Health Insurance Counseling & Advocacy Program
(714) 560-0424 or (800) 434-0222

For general information about cancer:

American Cancer Society
(949) 261-9446 or (800) ACS-2345 www.cancer.org

Susan G. Komen For the Cure
(714) 957-9157 or (800) IM-AWARE
www.komenoc.org or www.komen.org

National Cancer Institute
(800) 4-CANCER www.cancer.gov

About Susan G. Komen for the Cure®, Orange County Affiliate

Komen is the world's largest grassroots network of breast cancer survivors and activists fighting to save lives, empower people, ensure quality care for all and energize science to find the cures. Komen is dedicated to curing breast cancer at every stage - from the causes to the cures, to the pain and anxiety of every moment in between. They have supported every advance in breast cancer research over the past 25 years, while empowering people and ensuring quality care for all through community grants for breast health and treatment. Komen also engages millions of people in events like Komen Race for the Cure® in thousands of local communities.

For more information visit www.komen.org. ❖

CLRC Student Spotlight

Melody Chiueh, is a third year law student at Loyola Law School. Melody has been an extern with the Cancer Legal Resource Center for two semesters. Melody became an extern because her family has been personally impacted by cancer and she wanted to make a difference in the lives of others battling with cancer. Melody was also interested in being exposed to the various legal issues that affect the cancer community and developing her client skills through her work on the national telephone assistance line.

Melody is a dependable and compassionate extern who is always willing to take the time to explain laws and complicated procedures so a caller can understand what his or her rights are. Melody is extremely patient and can be relied upon to convey thorough and honest information even if that information is not what the caller necessarily wants to hear. CLRC callers can always expect a warm and genuine voice on the other end when speaking to Melody.

Upon graduating from law school, Melody plans on working in estate planning and tax. She still remains committed to the cancer community and has even encouraged her husband, Bobby Koba, a financial planner, to donate his time and expertise to the CLRC staff and callers. ❖



The CLRC is Hosting a Cancer Rights Conference in Orange County in October 2009!

Visit www.CancerLegalResourceCenter.org for upcoming details on this event! ❖

Advocacy Corner

The CLRC strongly believes that cancer is a political issue. Legislative advocacy in the Cancer Rights arena is important because it is an effective way to address the employment and health insurance laws that fail to provide adequate protections for people with cancer. Laws can: provide access to a particular treatment; protect people from discrimination in employment and health insurance; require the provision of health insurance coverage; create government benefits programs; and provide access to screening, treatment, and research.

The CLRC and Disability Rights Legal Center are currently supporting an important piece of federal legislation, the **Access to Cancer Clinical Trials Act of 2009** (H.R. 716), which would require insurance companies to cover routine medical care provided as part of a cancer clinical trial.

For information about this bill and other pieces of important legislation, please visit: www.disabilityrightslegalcenter.org/about/legislative_advocacy.cfm. ❖



Register to vote today!

The most effective way to make your voice heard is to vote. Visit the website for the California Secretary of State to register to vote online:

http://www.sos.ca.gov/elections/elections_vr.htm

New Legislation: American Recovery & Reinvestment Act of 2009

If you were/are involuntarily terminated from your job between 9/1/08, and 12/31/09, you may be eligible for a 65% subsidy to help pay your COBRA monthly premiums. The subsidy begins 3/1/09, and ends 12/31/09. The subsidy may also end early if you become eligible for a group health plan or Medicare.

In addition, if you were involuntarily terminated between 9/1/08 and 2/17/09, but didn't elect COBRA, you may receive an additional 60 days to elect COBRA and receive the subsidy. Please contact the CLRC for more information.

Cancer Legal Resource Center services are...

- National
- Free
- Confidential
- Specific to your situation
- Available in English and Spanish

The Cancer Legal Resource Center can help you if you have questions about:

- Employment
- Medical Leave
- Reasonable Accommodations
- Health Insurance
- Access to Healthcare
- Government Benefits
- Medicare
- Medi-Cal & Medicaid
- Patient Rights
- Disability Insurance
- Estate Planning
- Advanced Health Care Directives
- Life Insurance
- Custody & Guardianship
- Conservatorship
- Consumer Rights

Yes! I want to support the important work of the Cancer Legal Resource Center!

PAYMENT INFORMATION

LLS 11-3-71400-00000-7465 Federal Tax ID# 95-2960607

First Name _____ Last Name _____

Mailing Address _____

City _____ State _____ Zip _____ Daytime Phone # _____

CREDIT CARD PAYMENTS:

Please complete following information and mail or fax to DRLC:

Visa or MasterCard # _____ Exp. Date _____

Name on Credit Card _____

Zip Code Where Statement Sent _____

Signature Authorizing Charge _____

Amount Authorized \$ _____

Credit card payments will appear on your statement as "Loyola Law School"

PAYMENTS BY CHECK:

Please make check payable to the Disability Rights Legal Center:

919 Albany Street
Los Angeles, CA 90015
Secure Fax Number: 213-736-1030

Disability Rights Legal Center



Cancer Legal Resource Center

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