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Louisiana Legislature Passes Law Requiring Employers to Give Time Off for Genetic Testing and Cancer Screening

By Susan Fahey Desmond on July 21, 2023

A new Louisiana law goes into effect on August 1, 2023 requiring employers to provide time off from work for genetic testing and cancer screening.

Employer Requirements

The new act requires employers in Louisiana to provide employees a one-day leave of absence from work to obtain genetic testing or for cancer screening as long as it is medically necessary.

What Will be Considered to Be “Medically Necessary”?

- “Medically necessary” is defined as healthcare services that are in accordance with generally accepted evidence-based medical standards by most physicians or independent licensed practitioners “within the community of their respective professional organizations to be the standard of care.”
- The act also states that to be “medically necessary,” services being provided must be “reasonably necessary to diagnose, correct, cure, alleviate, or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain, or have resulted or will result in a handicap, physical deformity, or malfunction, and those for which no equally effective and less costly course of treatment is available or suitable for the recipient.”

- Services that are experimental and not approved by the Federal Drug Administration are not considered medically necessary. Nor is an investigational or cosmetic surgery.

What is Protected Information?

“Protected genetic information” means “information about an individual’s genetic tests, the genetic tests of an individual’s family members, or the occurrence of a disease, or medical condition or disorder in family members of the individual.”

Employee Obligations

Employees should give at least fifteen days’ notice to the employer prior to the leave and to make a reasonable effort to schedule the leave so as not to cause undue disruption of the employer’s operations. Employees are also required to provide documentation confirming the performance of the genetic testing and/or cancer screening. Of course, employees are not required to disclose the results of the screening. Nor should an employer inquire about results of genetic or cancer testing under the federal Genetic Information Nondiscrimination Act.

Is the Leave Paid?

Employers are not required to pay for the time off necessary for genetic testing and/or cancer screenings. The employee may elect, however, to substitute any accrued paid time off that the employer provides. The act is silent as to whether the employer can require an employee to use paid time off for the leave.

When Is the Act Effective?

The Act is effective on August 1, 2023.

Don’t Forget about GINA.

Under Title II of the Genetic Information Nondiscrimination Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

What Should Employers Do Now?

Employers will be required to post a notice that will be prepared by the Louisiana Workforce Commission that sets forth the requirements of the act. Employers should be on the lookout for the poster from the Louisiana Workforce Commission and review their policies.

Jackson Lewis attorneys are available to assist employers in administering their leave programs and complying with the myriad of state laws. Please contact your Jackson Lewis lawyer with any questions.