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California Supreme Court Rules That Uncapped Sick Leave Policies Are Not Covered By California's "Kin Care" Law

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The California Supreme Court has issued a significant ruling on the scope of California's "kin care" law, Labor Code § 233, which entitles employees in certain circumstances to use paid sick leave to care for ill family members. The Court held that when an employer's sick leave policy does not provide a measurable, banked number of paid sick days in a calendar year, the kin care law does not apply. *McCarther v. Pacific Telesis Group*. Paul Hastings represented Pacific Telesis and the other defendants in the case.

Facts of the Case

The lawsuit was brought against Pacific Bell Telephone Company and six of its affiliated companies, which then were part of the SBC family of companies and now are affiliated with AT&T. For many years, the applicable collective bargaining agreement ("CBA") between the Communications Workers of America and the companies (collectively, "AT&T") has provided that AT&T will pay employees for up to five days of absence due to sickness in a seven-day period. If an employee's illness or injury extends beyond a week, the employee may apply for short-term or long-term disability benefits under benefit plans provided by AT&T. Historically, the parties to the CBA have interpreted this provision as applying only when employees are absent due to their own illness or injury, not to attend to the illness of a family member.

There is no cap or limit on the number of days that an employee is eligible for these sickness absence payments in any year. If, for example, an employee receives five days of sick pay in a week, returns to work in the following week, however briefly, and then is absent again for the same or a different medical reason, the employee would be eligible for sickness absence payments for that second week, and so on throughout each year. Employees do not earn, vest or accrue any particular number of paid sick days in a year, nor do they have a "bank" of paid sick days that they accrue in increments over a period of time.

Although the sickness absence payments cover only employees' own illnesses, another provision of the CBA allows employees to take a certain number of paid personal days off ("PDO"), which employees can use for any purpose, including family illnesses.

AT&T also maintains an attendance control policy designed to regulate excessive absenteeism. Under its policy, employees' sickness-related absences may count as "occurrences" that could lead to progressive discipline, unless the absences are protected by the Family and Medical Leave Act, workers' compensation, or some other statute.

Plaintiff Kimberly McCarther, then an employee of SBC Services, Inc., took seven days off in 2004 to care for her ill children. She was not paid for these days off. Plaintiff Juan Huerta, an employee of Pacific Bell Telephone Company, took five days off in 2004 to care for his ill mother. He requested to use a PDO day for one of these days, and the Company paid him for that day. The other days were unpaid.

Labor Code Sections 233 and 234

Labor Code § 233 went into effect on January 1, 2000. It states that "any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's *accrued and available* sick leave entitlement, in an amount not less than the sick leave that would be *accrued during six months* at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee." (Emphasis added.) The statute defines "sick leave" as "*accrued increments* of compensated leave" for use by an employee during an absence due to illness or other medical reasons. (Emphasis added.)

The California Legislature enacted a companion statute, Labor Code § 234, three years later. Section 234 provides that an employer's "absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a *per se* violation of Section 233."

Plaintiffs' Lawsuit

In 2005, Plaintiffs McCarther and Huerta brought a class action lawsuit against AT&T in Alameda Superior Court, alleging that the sickness absence payments constitute "sick leave" under section 233, and thus the Company was unlawfully failing to make those payments available for absences attributable to family member illnesses. Plaintiffs further alleged that AT&T's attendance policy violates section 234, because the policy counts absences to care for sick family members as occurrences that could lead to discipline.

AT&T filed a motion for summary judgment, arguing that its sickness absence payments did not fall within Labor Code § 233 as a matter of law. The trial court ruled in AT&T's favor. On Plaintiffs' appeal, the California Court of Appeal reversed, concluding that AT&T's sickness absence payments *are* covered by the kin care law.

The Supreme Court's Holding: Section 233's Plain Meaning

The California Supreme Court unanimously reversed the Court of Appeal. It found that the plain meaning of the statutory text supports AT&T's argument that its sickness absence payments are not "sick leave" as defined in the statute. According to the Court, the facts that section 233 defines sick leave as "*accrued increments of compensated leave*," and that the statute limits the amount of sick leave that can be used to care for an ill family member to "an amount not less than the sick leave that would be accrued during six months," indicate that the reach of the statute is limited to employers that provide "a measurable, banked amount of sick leave." The Court stated that the statute "cannot sensibly be applied to the sickness absence policy at issue here," because it is impossible to determine

how much paid time off employees might be entitled to use in a six-month period under AT&T's uncapped policy.

The Court rejected Plaintiffs' argument that an employee's kin care leave entitlement could be based on the amount of sick leave that an employee actually utilizes in one year, even though this amount cannot be calculated in advance with "mathematical certainty." According to the Court, the Legislature endeavored to provide employees with guidelines to ascertain, precisely, an employee's kin care entitlement, and therefore any interpretation that renders impossible an accurate calculation of an employee's kin care leave entitlement is "illogical and contrary to the Legislature's clear intent."

The Supreme Court also concluded that the statute's references to "accrued increments of compensated leave" and "accrued and available" sick leave support the argument that the statute does not cover uncapped policies such as AT&T's. Citing dictionary definitions of "accrued," the Court concluded that the most common and sensible definition is "to accumulate over time," or words to that effect. The Court rejected various alternative definitions of "accrued" proposed by Plaintiffs and adopted by the Court of Appeal, finding them "strained" and inconsistent with the context in which the term is used in the statute. Instead, the Court stated, "by according the term 'accrued' a commonsense meaning of 'accumulated,' the conclusion that section 233 applies only to accrual-based sick leave policies, not uncapped sickness absence policies, is plain."

Effect of Labor Code Section 234

The Court also found that the Legislature's enactment of Labor Code § 234 bolsters its conclusion that AT&T's sickness absence payments are not "sick leave" within the meaning of section 233. Section 234 prohibits employers from using an absence control policy to count sick leave taken pursuant to section 233 as an absence that could lead to discipline. Thus, as the Court noted, under an unlimited sick pay policy such as AT&T's, employers would effectively be prevented from using an attendance management policy to limit the amount of kin care that an employee could claim. Such a result, the Court said, would be contrary to the plain intent of section 233.

The Legislative History of Section 233

Additionally, the Court found that section 233's legislative history confirms that the Legislature did not intend it to broadly apply to all types of sick leave policies. The Court noted that the bill that became section 233 and its predecessor bill were amended four times in ways that "intentionally limited" the scope of the statute. The Court observed that if the Legislature had intended for section 233 to cover every type of sick leave policy, it would have stated so expressly.

Finally, the Court rejected Plaintiffs' argument that its interpretation of the statute runs afoul of the legislative intent to protect employees. As the Court noted, employers are not required to provide paid sick leave at all, except under certain city ordinances. It noted that some employers, like AT&T, elect to provide an uncapped compensated sick leave policy in addition to paid personal days off that can be used to care for ill relatives. The unstated implication is that the Legislature knew what it was doing by excluding uncapped sick leave plans from the statute; otherwise, employers would not offer such generous sick leave benefits to their employees.

Practical Consequences of the Supreme Court's Decision

The Court's decision will not affect employers who already maintain traditional accrual-based sick leave policies that specify a definite number of paid sick days in a 12-month period. However, the

decision is a welcome one for employers who provide uncapped sick pay benefits for employee illnesses, as it will give them the flexibility to offer the generous benefits while limiting the number of paid sick days that can be used for family illnesses.

The decision leaves some unanswered questions as to whether certain other types of sick leave plans and policies not at issue in the case – variants of the uncapped policy maintained by AT&T – are covered under the statute. Employers who have questions about the effect of this decision on their sick leave policies should consult with their employment counsel.



If you have any questions about the Court's decision or its practical effects, please contact either of the following Paul Hastings employment lawyers:

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