



Donating Sick Leave: The Pros and Cons

by Richard McGee

Most leave is discretionary for employers and therefore the employer can choose whether to provide the leave, under what circumstances and whether the leave bank carries over from year to year. There is an argument that the federal FMLA is not discretionary but mandatory for tribal employers. There is also an argument that the FMLA does not apply.

Whether an employer permits donated sick leave is discretionary. If the tribe permits donated sick leave, there are a handful of arguments for and against the policy.

Arguments in Favor

Employees cannot afford to be out of work, so unpaid leave is not a practical option for many employees. Donated leave from Employee A to Employee B relieves the employee of that financial burden.

Flexible employer policies like a donated sick leave policy generates employee loyalty and good will. Loyal employees work

harder, provide better work and stay longer.

The tribe earns a reputation for being a fair employer and that attracts good people seeking to work for the tribe.

Compassionate policies which relieve employees of their financial burdens when they are ill are aligned with the tribe's values.

Arguments Against

Donated leave policies are difficult to administer for Human Resources and Finance.

There will likely be a disparity in pay between the employee donating the leave and the employee receiving the donation. In the case where the employee donating the leave earns more than the employee receiving the donation, the employer benefits but if the donating employee earns less than the employee receiving the donation, the employer does not benefit. An example: Sally earns \$20 an hour and has 40 hours of sick leave in her account. Jim earns \$10 an hour. Sally donates 8 hours of sick leave to Jim. Sally has donated \$160 worth of leave and the employer will pay Jim \$80 for the time off. The employer benefits. But if Jim donates 8 hours of his sick time to Sally, Jim's \$80 worth of leave costs the employer \$160 when paid to Sally.

Tribal employers, who have grant programs, have to determine how to track these costs and comply with the requirements of those grants. This can create some difficulty for the Human Resources and Finance Departments.

Employers want employees at work and being productive. Discretionary leave policies can be abused (just as any policy can be abused) by certain employees. When employees are gone from work for whatever reason, the work does not get done. That places a strain on other employees who are burdened by additional work.

When employees donate their leave, they can inadvertently donate too much and later in the year, when the employee needs the leave they donated, it can create a shortage for that employee. Therefore, employers should consider placing caps on the number of hours employees can donate.

Recommendation: In considering a sick leave donation policy, make sure you consult with leadership, finance, human resources, contracts and grants and the person down the hall with lots of common sense and good writing skills. ♣

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