

M E M O R A N D U M

DATE: February 27, 2010
TO: Jim Weitkamp, Laura Reynolds, Mary O'Melveny & Judy Belsito
FROM: David A. Rosenfeld
Re: *Kimberly McCarther, et al. v. Pacific Telesis Group, et al.*
Supreme Court of California, Case No. S164692

The following is a summary which you may want to distribute:

After a four year battle, the Supreme Court has unfortunately ruled that our members employed by AT&T are not entitled to Kin Care rights under the language of our sick leave plan. Kin care is provided for by Labor Code § 233 and generally allows employees who have a paid sick leave plan to use up to one half of their accrued sick leave in any year to take care of ill or sick parents, spouses, children or registered domestic partners.

The Supreme Court ruled that given the specific language of the state statute Kin Care does not apply to our plan because our plan is "uncapped." In effect the Supreme Court ruled that because our plan is uncapped without any limits, the effect of applying Kin Care would be to allow employees to have virtually uncapped Kin Care throughout the year.

The Supreme Court did recognize that employees are limited to the amount of sick leave they can use for their own sickness by the attendance management program. That however doesn't count as a "cap" because it is not a certain or definitive cap on which the employer can figure out how much is one half of the accrued sick leave to which an employee would be entitled under Kin Care.

The Court did however make it plain that where employers have sick leave plans, they cannot discipline employees in any respect for taking kin care. This is an important victory because it preserves the value of Kin Care to workers throughout California.

This is an unfortunate result because it means our members will not be entitled to take Kin Care. It is a result of the unique and somewhat generous sick leave plan available under our contract. The decision is important because it does reaffirm the importance of protections of Labor Code § 234. The decision is very limited to uncapped sick pay plans which are very unusual.

Our members are still entitled to fully use the provisions of our contract. They are also entitled to use Family and Medical Leave Act and the California Family Rights Act. Please be vigilant to enforce these rights.