

LABOR & EMPLOYMENT

>>ALERT

NEW CA LAW EXPANDS REQUIREMENTS FOR PROVIDING FAMILY AND MEDICAL LEAVE

In the latest expansion of California's family and medical leave law, effective January 1, 2021, employers with five or more employees will be required to provide unpaid family and medical leave to qualifying employees.

The new law, [SB 1383](#), also allows employees to take protected leave to care for an expanded set of family members under circumstances beyond what the earlier version of the law provided.

As the COVID-19 pandemic continues across the country, this new law will be particularly impactful as California employees may increasingly seek leave to care for themselves and their family members.

EMPLOYEE QUALIFICATIONS REMAIN

As under the California Family Rights Act (CFRA) — a predecessor to SB 1383 — California employees may qualify for up to 12 weeks of job-protected, unpaid family and medical leave so long as they have worked for a qualifying employer for 12 months and 1,250 hours in the previous 12-month period.

COVERAGE IS EXPANDED TO EMPLOYERS OF FIVE OR MORE EMPLOYEES

Previously under the CFRA, California employers of fewer than 50 employees

THE BOTTOM LINE

Before January 1, 2021, California employers with five or more employees should update their handbooks and relevant policies to reflect the newly expanded California Family Rights Act (CFRA) leave requirements under Senate Bill 1383. Covered employers should also prepare to provide family and medical leave to eligible employees consistent with the law's requirements.

within 75 miles of a worksite were not required to provide family care and medical leave to employees, and employers with fewer than 20 employees within 75 miles were not required to provide baby bonding leave under California's New Parent Leave Act (NPLA).

The new law repeals the NPLA and amends the CFRA to require California employers with at least five employees to provide statutory leave to qualifying employees. During the duration of a CFRA leave, the employer must also pay for the employee's coverage under a group health plan at the same level and conditions as if the employee had continued their employment during the leave.

The expansion of the CFRA allows employees of smaller companies to take advantage of California's Paid

Family Leave Program with the benefit of job protection.

EMPLOYEES MAY TAKE LEAVE FOR ADDITIONAL REASONS

The prior CFRA only provided for protected leave for an employee to bond with their new child or care for themselves or their minor child, parent, spouse or domestic partner. Now, eligible employees in California may also take leave to care for their grandparent, grandchild, sibling or adult child.

Employers must also now provide up to 12 weeks of unpaid leave during any 12-month period due to a qualifying exigency related to covered active duty or call to covered active duty of an employee's spouse, domestic partner, child or parent in the U.S. Armed Forces.

>> continues on next page

EACH PARENT RECEIVES UP TO 12 WEEKS LEAVE

Previously, if two parents of a child both worked for the same employer and each parent requested leave in connection with the birth, adoption or foster care placement of the child, the employer was only required to provide a combined total of 12 weeks of unpaid leave to the parents. Under the new law, each parent of the same employer is entitled to 12 weeks of unpaid leave.

EMPLOYERS CANNOT REFUSE REINSTATEMENT OF “KEY EMPLOYEES”

The new law also removes an employer’s right to refuse to reinstate certain “key” salaried employees where the refusal is necessary to prevent substantial and grievous economic injury to the employer.

INTERACTION OF CFRA AND THE FEDERAL FMLA

California’s expanded family and medical leave statute opens the door for employees to take two separate leaves under the CFRA and the federal Family Medical Leave Act (the FMLA) in certain circumstances. Previously, because the CFRA and the FMLA provided leave for employees to care for the same set of family members, employees taking CFRA leave generally took any FMLA leave concurrently.

Now, this new law allows qualified employees to take leave to care for certain family members who are not covered by the FMLA. Therefore, an employee who takes leave under the expanded CFRA to care for a family member who is not covered by the FMLA (such as a sibling, grandparent or grandchild) would not concurrently utilize FMLA leave. In that situation, an employee who works for an employer who is also covered by FMLA would be able to take CFRA leave *and* remain eligible to take FMLA leave later in the year if, for example, they subsequently needed leave to care for their parent.

SMALL EMPLOYER FAMILY LEAVE MEDIATION PILOT PROGRAM

Employers with five to 19 employees may utilize a new Small Employer Family Leave Mediation Pilot Program with the Department of Fair Employment & Housing (DFEH) to mediate claims brought by employees under SB 1383. Employers may request mediation through the DFEH within 30 days of receipt of an employee’s DFEH right-to-sue letter, and the employee will be precluded from pursuing a civil claim in court before completing mediation. The pilot program extends until January 1, 2024.

FOR MORE INFORMATION

Daniel A. Feinstein
Partner/Co-Chair
212.468.4885
dfeinstein@dglaw.com

Marissa L. Comart
Associate
212.468.4952
mcomart@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP
212.468.4800
1675 Broadway, New York, NY 10019
www.dglaw.com

© 2020 Davis & Gilbert LLP