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CFRA LEAVE EXPANDED TO INCLUDE EMPLOYERS OF FIVE OR MORE

Effective **January 1, 2021**, the California Family Rights Act ("CFRA") will be expanded to include all employers with five or more employees, imposing new burdens on small employers. Presently, employers with 50 or more employees are subject to the CFRA. The CFRA requires employers to provide up to 12 weeks of job protected leave to eligible employees who have a serious health condition, need to care for a family member with a serious health condition, or seek time to bond with a newborn or a child placed with the employee for adoption or foster care.

The CFRA expansion will effectively supersede the New Parent Leave Act ("NPLA"), which presently requires employers with 20 to 49 employees to allow eligible employees leave to bond with a newborn or a child placed with the employee for adoption or foster care.

The CFRA expansion, entitled Senate Bill 1383, makes each of the following changes to current California law:

- Decreases the number of employees an employer must have to be covered by the CFRA's obligations from 50 to five;
- Expands the CFRA's definition of family member to include grandparents, grandchildren, and siblings;
- Adds certain qualifying exigencies related to an employee's family member being called to active military service to the list of reasons an employee may take CFRA leave;
- Eliminates the "key employee" provision that allows employers to deny reinstatement of employees in some circumstances where an employee is among the highest ten percent of wage earners in the company;
- Eliminates the current ability of employers to cap baby bonding leave to a combined total of 12 weeks when both parents are the employer's employees; and,
- Effectively supersedes the NPLA by applying all of the CFRA's requirements to employers of five or more employees.

To qualify under the CFRA, an employee must meet all of the following criteria: 1) he/she worked for the covered employer for at least 12 months prior to commencing leave (not necessarily 12 consecutive months); 2) worked at least 1,250 hours for the covered employer in the 12 consecutive months prior to commencing leave; and, 3) worked at a location with at least five employees within a 75-mile radius.



Employers with five or more employees are encouraged to contact counsel in advance of the new year to update existing employee handbooks and develop practices for handling CFRA related leave requests. Additionally, employers with 20 or more employees should adjust employee eligibility requirements in their existing CFRA or NPLA policies to include employees working at a location where there are five or more employees within a 75-mile radius.

NEW COVID-19 LAWS FOR THE WORKPLACE

COVID-19 Reporting: Also going into effect on January 1, 2021 are new COVID-19 reporting and notice requirements. Under California's Assembly Bill 685, the employer must do the following upon receiving notice of potential COVID-19 exposure in the workplace:

- Provide written notice to employees and the employers of any subcontractors who were at the same worksite as the impacted employee;
- Provide a written notice to the representative of the employees, if there is one, including the same information that must be provided on a Cal/OSHA Form 300 injury and illness log;
- Provide exposed employees, and their representative if there is one, with information regarding COVID-19 related benefits under federal, state, and local laws; and,
- Notify employees of the disinfection and safety plan that is implemented.

California Expansion of Families First Coronavirus Response Act ("FFCRA"): On September 9, 2020, AB 1867 took effect and expanded certain rights granted to employees by the FFCRA. Pursuant to AB 1867, California employers must provide paid sick leave under certain circumstances when employees are (1) subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) advised by a healthcare provider to self-quarantine; and/or, (3) prohibited from working by the employer due to COVID-19 health concerns. Where the FFCRA exempted employers of first responders, health care workers, and employers with over 500 employees from its paid sick leave requirements, AB 1867 closes these gaps and requires those same employers to provide paid sick leave. Unlike the FFCRA, AB 1867 does not require an employer to provide leave for the purposes of caring for another individual. AB 1867 also requires an employer to:

- Provide a notice to employees of their rights under AB 1867;
- Report available leave on an employee's itemized wage statement or separate writing provided each payday; and,
- Retain records documenting hours worked, leave provided, and leave used by an employee for at least three years.



COVID-19 and Workers' Compensation: California's SB 1159, which became effective September 17, 2020, partially extends and modifies Governor Gavin Newsom's Executive Order, which created a presumption that an employee who worked outside the home and contracted COVID-19 contracted it at work. Under SB 1159, if an employee becomes infected with COVID-19 after July 6, 2020, employers must report the COVID-19 positive employee to their workers' compensation carrier within three days of learning of the infection. In addition to this notice requirement, SB 1159 extends the presumption of compensable injury to first responders and health care professionals, and to any employee who tests positive during an outbreak at the workplace.

Questions regarding application of these new laws related to COVID-19 should be promptly directed to counsel. Stay tuned.

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