

New Parental Leave For Small Businesses



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Agenda

- Legislative History.
- Parental Leave Basics:
 - Eligible Employer.
 - Eligible Employee.
 - Leave Entitlement.
 - Employer Requirements/Employee Protections.
 - Health Benefits and Premiums.
- Employer Liability.
- Mediation Program.
- Future Regulations.
- Unanswered Questions.
- Best Practices.

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Legislative History

- Last year, SB 654 (Hannah-Beth Jackson):
 - 20 or more employees; six weeks of parental leave; no mediation provision.
 - Job Killer.
- Vetoed by Governor Brown.
 - Concern about the potential liability that could result from the bill.
 - Suggested a mediation option to mitigate potential employer liability.

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Legislative History, Cont.

- This year, SB 63 (Hannah-Beth Jackson):
 - Job Killer.
 - More expansive than last year.
 - Same target — small businesses with 20 or more employees.
 - Signed by Governor Brown.
- Components of New Parental Leave:
 - 12 weeks of protected parental leave.
 - Mediation program.
 - Private right of action.

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Parental Leave Basics

- Applies to employers with 20 or more employees.
- Provides 12 weeks of parental leave to eligible employees.
- Is solely for bonding with a new child within one year of the child's birth, adoption or foster care placement.
- Limited to employees who are not subject to Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA).

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Eligible Employer

- Person who directly employs 20 or more persons to perform services for a wage or salary.
- Any state, political or civil subdivision of the state and cities.

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Eligible Employee

- Worked more than 12 months for the employer.
- Worked at least 1,250 hours during the previous 12-month period.
- Works at a worksite where there are at least 20 employees within a 75-mile radius.
 - *Note:* FMLA/CFRA require 50 employees within a 75 mile radius for eligibility.
- Not intended to apply to employees otherwise "subject to" both the FMLA/CFRA.

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Leave Entitlement

- 12 weeks of parental leave.
 - This is in addition to leave under Pregnancy Disability Leave (PDL).
- Employee may use accrued vacation pay, paid sick time or other accrued paid time off, or other paid or unpaid time off negotiated with employer.
- Paid Family Leave (PFL) benefits also available to both parents.

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Leave Entitlement, Cont.

- Both parents working for the same employer are entitled to leave, but ...
 - Employer is not required to provide more than 12 weeks total for both parents.
 - Employer may, but is not required to, provide simultaneous leave to both parents.
- *Note:* This is different from CFRA.

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Employer Requirements/Employee Protections

- Employer cannot deny leave.
- Employer cannot refuse to hire, discharge, fine, suspend, expel or discriminate because:
 - Employee exercises right to leave;
 - Employee provides testimony or information about the employee's own leave or another person's leave; or
 - Employee provides testimony or information in an inquiry or proceeding related to the parental leave rights.

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Employer Requirements/Employee Protections, Cont.

- Employer must provide a guarantee of reinstatement to the same or comparable position *before leave begins*.
- Note: Failure to do so is deemed a refusal to grant the leave.
- Employer must ensure continuation of health benefits.

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Health Benefits And Premiums

- Employer must maintain and pay for coverage.
- 12 weeks over the course of 12 months.
- Same level and under same conditions as if employee was still working.
- Premiums recoverable if both conditions occur:
 - Employee fails to return from leave; and
 - Failure to return is for reasons other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the control of the employee.

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Liability For Employer?

- Yes.
- Failure to provide 12 weeks of protected parental leave;
- Failure to return employee to same or comparable position;
- Failure to maintain benefits while employee is on leave;
- Took any adverse action against the employee for taking the leave.

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Mediation Program

- Mediation Pilot Program (subject to funding) set to end on 1/1/2020.
- Created by Department of Fair Employment and Housing.
- Employer may request mediation within 60 days of receiving a right-to-sue notice.
- Employee cannot sue until mediation is completed or when employee chooses not to participate in mediation.

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New Regulations?

- SB 63 directs the Fair Employment and Housing Council to incorporate provisions of this new leave into the existing CFRA regulations; but ...
- Only to the extent the provisions are within the scope of and not inconsistent with the CFRA.
- Anticipate new regulations in 2018.

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Unanswered Questions

- Intermittent Leave.
- Notices:
 - Employee notice of need for leave to employer.
 - Employer notice of right to leave for employee.
 - Employer designation notice (guarantee of right to reinstatement).
- Joint employer issues.
- And many more.

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Best Practices

- Employers with 20 or more employees must begin providing this new leave by January 1, 2018.
- Employees must be eligible to receive the leave.
- Update Employee Handbook to include Parental Leave policy.
- Provide written notice of guarantee to reinstatement before leave begins.
- Make sure health benefits are maintained.

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Thank You

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