

MSF CLIENT ALERT

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California Expands Family and Medical Leave

Effective January 1, 2021, California employers with 5 or more employees are required to provide family and medical leave to eligible employees.

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California's current family and medical leave laws, the California Family Rights Act ("CFRA") and the New Parent Leave Act ("NPLA"), similar to the federal Family and Medical Leave Act ("FMLA"), permit qualifying employees to take up to twelve (12) weeks of job-protected, unpaid leave in a twelve (12) month period for certain serious health conditions, to care for a parent, child or spouse with certain serious health conditions, or to care for a child following the birth, adoption or placement of a foster child with an eligible employee.

In addition, during the period of leave, the employer must maintain and pay for the employee's coverage under a group health plan at the level and under the same terms and conditions coverage would have been provided if the employee had continued in employment during the period of leave.

Key Changes to California's Family and Medical Leave Effective January 1, 2021

On September 17, 2020, Governor Newsom signed Senate Bill 1383 ("Law"), which repeals the CFRA and NPLA and replaces those laws with a single provision of family and medical leave as described above with the following key additions to the Law:

Applies to Employers with 5 or More Employees

Currently, the CFRA only requires employers to provide family and medical leave if they have 50 or more employees. Similarly, the NPLA currently only requires employers to provide leave for the birth, adoption or placement of a foster child with the employee if the employer has 20 or more employees.

Effective January 21, 2021, employers with 5 or more employees within 75 miles of the employee's worksite will be required to provide family and medical leave to their otherwise eligible employees.

Expands Definition of Family Members

Under the current laws, leave for purposes of caring for a family member is only available if the family member is the employee's child, parent, spouse or domestic partner. The new Law expands the definition of family member to include grandparents, grandchildren and siblings.

Increases Leave Available When Both Parents Work for Same Employer

Under the current laws, employers that employ both parents of a child only had to provide a combined total of up to twelve (12) weeks of leave for both employee parents.

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However, the new Law requires employers to provide up to twelve (12) weeks of leave for each employee parent.

Expanded Reinstatement Rights

The new Law also removes the prior right of an employer to refuse reinstatement of a salaried employee who was among the highest 10% of the employees and where the refusal of reinstatement was necessary to prevent substantial and grievous economic injury to employer. Covered employers can no longer rely on that right.

Employer Takeaways

California employers with less than 50 employees, who were previously exempt from the CFRA, and California employers with less than 20 employees, who were previously exempt from the NPLA, should draft leave policies and implement leave procedures that take into account this new Law in advance of the January 1, 2021 effective date. Larger California employers may also need to update their family and medical leave policies and forms to address the expanded reasons to take leave, increased eligibility for leave and greater reinstatement rights as described above.

Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



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