

The 12 days of California Labor & Employment Series – Day 6 “New Parent Leave Act”

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It's the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2018. In the spirit of the season, we are using the next “12 days of the holidays” to blog about one California law a day and that law's impact on California employers. On the sixth day of Christmas, my Labor and Employment attorney gave to me – six geese a laying and SB 63.

Prior to SB 63, The California Family Rights Act (CFRA) provided parental leave to employees of companies with 50 or more employees. SB 63 extends CFRA to employees working at employers with 20 or more employees within a 75 mile radius. In order for an employee who meets those conditions be allowed the parental leave, the employee must have worked for 12 months with an eligible employer and at least 1250 hours during the 12 months prior to the leave. If the employee meets this criteria, he or she qualifies for 12 weeks of parental leave to bond with a new child within one year of a child's birth, adoption or foster care placement.

An employee may use accrued vacation pay, paid sick leave or any other accrued time during the twelve weeks of parental leave. In addition, the employer must maintain the employee's health insurance at the same level and under the same conditions while the leave is ongoing. Note, however, that if an employee fails to return after leave, the employer may recover the costs of maintaining the health insurance while the employee was on leave if the reason for not returning is due to a reason other than a serious medical condition or other circumstances beyond the employee's control.

SB 63 also requires the Department of Fair Employment and Housing (DFEH) to create a pilot parental leave mediation program for the resolution of claims related to parental leave. An employer may demand mediation within 60 days of receiving a “right to sue” letter from the DFEH. While the pilot program is ongoing, an employee cannot pursue a civil action until the mediation is complete or until the employee affirmatively elects not to participate in mediation. This program expires on January 1, 2020.

Smaller employers need to consider whether parental leave laws now apply to them. If an employer previously did not have to provide parental leave but is required to under SB 63, it should update its employee handbook, train staff on how to handle a parental leave and calculate leave, and know that the employee's health insurance continues on leave. Since SB 63 affects smaller employers with fewer employees available to cover another employee's job duties while that employee is on parental leave, an employer affected by SB 63 may want to be proactive and plan how it will handle an employee's parental leave.

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Topics

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