

The 12 days of California Labor & Employment Series – Day 2 “Mandatory Bereavement Leave”

2 min read

Dec 9, 2022

By: Mellissa A. Schafer

In the spirit of the season, we are using our annual “12 days of the holidays” blog series to address new California laws and their impact on California employers. On this second day of the holidays, my labor and employment attorney gave to me: two turtle doves and AB 1949.

The California Family Rights Act (CFRA) provides leave to qualified employees similar to the federal Family and Medical Leave Act (FMLA). AB 1949 adds to the CFRA by including an additional leave for bereavement. Per AB 1949, employers with five or more employees must provide up to five (5) days of bereavement leave upon the death of a family member as defined by CFRA to a qualified employee.

A family member includes a spouse or child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. It is the same definition as used in the CFRA. An employer may be liable for failing to authorize such requested leave.



Under the new law, bereavement leave is unpaid, but an employee would be able to use any of their vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee to be paid for the bereavement days. In addition, the bereavement leave must be completed within three (3) months of the date of death of the family member. However, the bereavement leave days need not be consecutive.

Some employers may already have a bereavement leave policy in place. If you have a current bereavement policy, the only action item which needs to be taken is to ensure your policy provides at least what AB 1949 requires. For example, if your policy provides for three days of bereavement leave, as of January 1, 2023, you

would need to allow five days of bereavement leave. If your policy currently provides for three days of paid bereavement leave, you would not need to have the remaining two days of bereavement leave paid. Also, if your current bereavement policy matches or provides more than what AB 1949 requires, there is no action needed on your part to comply with this new law.

An employer should also know that it may request, within 30 days of the first day of leave, documentation of the death of the family member. This documentation might include a death certificate, a published obituary, a written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

AB 1949 does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by AB 1949.

It is not required to update an employee handbook with bereavement leave information as long as the employer complies with AB 1949. The most imperative takeaway for employers is ensuring that human resources is aware of the new law and provides the requested bereavement leave when submitted pursuant to the law.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

California, Bereavement, California Family Rights Act, #12Days