



california enacts new employee reproductive loss leave law for 2024

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MSK Client Alert

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California Governor Newsom recently signed into law a new law allowing for "reproductive loss leave" (SB 848) which will permit eligible employees to take up to five days of unpaid leave following a "reproductive loss event." SB 848 becomes effective on January 1, 2024.

Overview of the California's Newest Leave Law

Given that the law was enacted as a new subset of California bereavement leave, employee eligibility criteria for both leaves is similar. A California employee will be eligible to take reproductive loss leave if they have been employed by an employer with at least five employees for at least thirty (30) days prior to the commencement of their leave, and have experienced a reproductive loss event. A "reproductive loss event" is defined as the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

SB 848 forbids an employer from refusing to grant an eligible employee's request to take reproductive loss leave; however, similar to bereavement leave, an employer may limit the number of days per 12-month period that an otherwise eligible employee may take for reproductive loss leave. Specifically, SB 848 provides that if an employee experiences more than one reproductive loss event within a 12-month period, an employer is only required to grant the employee with a maximum of 20 days of reproductive loss leave (as opposed to the 15 day maximum for bereavement leave) within a 12-month period.

Interplay With Other Leave Laws

Additionally, although employers cannot require employees to take all five (5) days of reproductive loss leave consecutively, employees can be required to complete reproductive loss leave within three (3) months of the date of their reproductive loss event. That said, if an employee, prior to or immediately

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following a reproductive loss event, chooses to take or is already taking leave pursuant to the California Family Rights Act, the Family and Medical Leave Act, Pregnancy Disability Leave Law or any other state or federal leave-entitlement law, the employer may only require the employee to complete their reproductive loss leave within three (3) months of the date such other leave ends.

While an employer is not required to compensate an employee on reproductive loss leave, the employee must be permitted to utilize any existing leave policy that the employer already has in place, i.e. employees must be allowed to use any available paid sick leave, paid time off or vacation that is otherwise available while on reproductive loss leave.

Prohibition on Requiring Documentation

SB 848, unlike the State's bereavement leave law, specifically prohibits an employer from requiring an employee to provide documentation of their reproductive loss event, or any other support for their reproductive loss leave request. Therefore, as long as an employee has met all aforementioned eligibility criteria, and has remaining reproductive loss leave days available in the 12-month period, an employer must grant the employee's request to take reproductive loss leave.

Confidentiality of Records

Employers are required to maintain confidentiality of employees requesting reproductive loss leave, and any information provided by an employee in connection with their leave must be maintained as confidential and not disclosed except to internal personnel or counsel, as necessary, or if required by law. Finally, retaliation by an employer against an employee for requesting or taking reproductive loss leave is strictly prohibited.

California employers should update their employee handbooks to account for this new state leave law, accordingly.