

CALIFORNIA MANDATES UNPAID BEREAVEMENT LEAVE FOR EMPLOYEES: 4 TAKEAWAYS FOR EMPLOYERS

Insights
Sep 30, 2022

A new law will require California employers to update their handbooks and leave policies — including their sick leave policies — to account for a new employee bereavement benefit. Governor Newsom approved the bill on September 29 requiring employers with five or more employees to provide up to five days of unpaid leave to eligible employees for the death of a family member. Here are four key takeaways for employers about the new law.

1. Leave Does Not Need to Be Taken Consecutively

Covered employers will need to provide at least five days of bereavement leave to eligible employees for the death of a family member. The bill defines “family member” as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law of the employee. To be eligible for the leave, the employee must have worked for at least 30 days with the employer. The five days of leave do not need to be taken consecutively but must be completed within 3 months of the death of the family member. This means that you may have employees taking a full workweek off for a death in the family or merely switching to shortened workweeks for a 3 month period.

2. Employees Can Use PTO to Offset Lost Wages

While the leave is unpaid, employees are entitled to use their vacation, personal leave, accrued and available sick leave, or other available paid time off (PTO). Importantly, because employees can now use paid sick leave for bereavement leave to offset lost wages, employers should update their

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Tyler T. Rasmussen
Partner

949.798.2163

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sick leave policy to reflect bereavement leave as a qualify reason to utilize their sick leave benefits.

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3. You May Request Documentation

You are allowed to confirm the need for leave by asking for documentation, such as a death certificate; a published obituary; or a written verification of death, burial, or memorial services from a funeral home or other applicable entity. Note, however, this request must occur within 30 days of the employee's first day of leave.

4. The New Law Allows Retaliation Claims, But Not PAGA Lawsuits

As with most leave laws in California, the bill provides enforcement provisions. The law permits employees to file claims against employers who prevent employees from taking their available bereavement leave or who take adverse employment actions against employees who exercise their right to take the leave. Additionally, you may not retaliate against an employee who provides information or testimony in an investigation or proceeding related to their own request for leave or another employee's. Importantly, the bill is codified under Government Code § 12945.7 — not the California Labor Code. This means that you may see retaliation claims stemming from this new law, however, employees will not be able to file claims under the Private Attorneys General Act (PAGA) for any alleged violations.

Conclusion

We will continue to monitor these developments, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to keep up with the most up-to-date information. Please contact your Fisher Phillips attorney, the authors of this Insight, or [any attorney in our California offices](#) or any attorney in our [Employee Leaves and Accommodations Practice Group](#) should you have any questions.