

# CALIFORNIA EMPLOYEES ARE NOW ENTITLED TO LEAVE FOR REPRODUCTIVE LOSS: TOP 6 THINGS EMPLOYERS NEED TO KNOW

Insights  
Oct 11, 2023

Governor Gavin Newsom just signed into law a bill that further expands California unpaid leave by allowing employees to take protected time off due to “reproductive loss.” Senate Bill 848, signed into law on October 10, will require employers to adjust their policies and procedures for leave of absences in California once it takes effect on January 1, 2024. What are the top six things you need to know about this impending law?

## Top 6 Things to Know About New Reproductive Loss Law

### 1. It Contains Broad “Employee” and “Employer” Definitions

SB 848 will amend the California Government Code to require private employers with five or more employees (and public employers of any size) to provide protective time off to California employees for a “reproductive loss event.” The term “employee” is defined to mean any person employed by the employer for at least 30 days.

### 2. Reproductive Loss Event is Also Broadly Defined

The term “reproductive loss event” is defined to mean a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. If the employee would have been recognized as a parent if the forementioned events were successful, the employee will be covered under this definition.

### 3. Provides Reproductive Loss Leave

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Similar to bereavement leave, which is also known as California Government Code section 12945.7, an eligible employee is entitled to receive up to five days of protective time off following a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. The five days of leave do not need to be taken consecutively. However, the leave must be completed within three months of the reproductive loss event.

If the eligible employee suffers more than one reproductive loss event within 12 months, the employer is only required to provide up to 20 days of leave.

#### **4. Payment for Leave Depends on Circumstances**

Whether the reproductive loss leave is paid or unpaid depends on an employer's existing leave policy. If an employer does not have an existing leave policy, all five days may be unpaid. However, while on leave, an employee is entitled to use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

#### **5. Employees Are Not Required to Provide Documentation Supportive Leave Request**

Unlike bereavement leave, in which employees are required to provide documentation demonstrating the death of a family member, the new law does not require an employee to provide any documentations supporting their request for reproductive loss leave. This means that the eligible employee is entitled to request and take reproductive loss leave without needing to provide evidence that such leave is necessary.

#### **6. Employers Are Required to Maintain the Confidentiality of the Employee Requesting Leave**

The new law requires the employer to maintain the confidentiality of any employee requesting reproductive loss leave. This means that the employer is responsible for ensuring that any information provided by the employee concerning this act remains confidential and is only shared with internal personnel or counsel as needed.

#### **What Should You Do Next?**

You should review your policies and procedures for compliance. If your policies do not already provide for leave

of absences for reproductive loss, you should consider updating your company policies and handbook. You should also educate any individual involved in handling request for leave of absences.

## **Conclusion**

Should you need assistance with updating your Company handbook or revising your policy to provide for unpaid and/or paid leave, please contact your Fisher Phillips attorney, the authors of this insight, or any of our attorneys in [our California offices](#). We will continue to monitor this bill for any updates. Make sure you subscribe to [Fisher Phillips' Insight System](#) to gather the most up-to-date information on the workplace.