



# What California Employers Need to Know About New Leave Rights for Reproductive Loss: Your 5-Step Compliance Guide

Insights

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Private employers in California with five or more employees and all public employers in the state must provide employees with leave for reproductive-related loss under a new law that took effect this year. SB 848 expands bereavement leave, allows employees to take up to five days of protected leave following a reproductive loss event, and protects employees from termination, discrimination, and retaliation for exercising those rights. Here's what you need to know about this new law and your five-step guide for compliance.

## What Is a Reproductive Loss Event?

Under the new framework, a “reproductive loss event” is defined as a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. The reproductive loss event applies to any person who would have been a parent as a result of the unsuccessful adoption, surrogacy, assisted reproduction, or pregnancy.

## Is Reproductive Loss Leave Paid?

Your existing applicable leave policy will affect whether this leave is paid or unpaid. If you do 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.

## What Documentation, If Any, Must the Employee Provide?

The reproductive loss leave law does not require an employee to provide any documentation 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. This is unlike other types of leave, such as bereavement leave, which requires employees to provide documentation regarding the death of a family member in order to be eligible for leave.

## Are There Any Confidentiality Requirements?

Employers are required to maintain the confidentiality of any employee requesting reproductive loss leave. This means employers are responsible for ensuring that any information provided by an employee concerning any such request for leave remains confidential and is only shared with internal personnel or counsel as needed.

The text of the law is silent on the potential repercussions for an employer that violates the confidentiality requirement, but it is nevertheless probable that employees whose privacy is violated or compromised on these grounds will seek recourse or damages, just as they would for other types of privacy violations. So, you should have a plan on how to handle sensitive employee information.

### **Are There Any Limitations?**

- In order to be eligible to take reproductive loss leave, employees must be employed at least 30 days at the time of their request. Once eligible, though, employees may be entitled to multiple leaves per year, if they experience multiple reproductive loss events.
- The maximum allowable amount of reproductive loss leave is 20 days within a 12-month period.
- **Proximity to Loss Event.** While the five days of leave do not need to be taken consecutively, the leave must be completed within three months of the reproductive loss event.

### **Your 5-Step Compliance Guide**

In order to ensure your policies and procedures are compliant with the current law, we recommend taking the following steps:

1. Review your current leave policy and determine whether and to what extent it covers this type of leave.
2. Determine, based on the leaves your company already provides, whether you are required to provide paid time off for reproductive loss leave.
3. Determine whether and to what extent you will need to update your company policies and employee handbook.
4. Designate a point of contact and develop a system for maintaining confidentiality throughout the process.
5. Educate any employee involved in handling leave requests on best practices and requirements under the reproductive loss leave law.

### **Conclusion**

If you need assistance 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 attorney in our California offices.

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