

MORE CONFUSION LIKELY OVER CALIFORNIA'S "PAID FAMILY LEAVE"

Insights

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Earlier this year Gov. Brown signed into law an expansion of the state's "paid family leave" benefit. While the new law does not become effective until July 1, 2014, already media outlets have reported that employees will have expanded rights to paid time off from work next year. This is only partially correct and it continues to spread the confusion over what "paid family leave" really means.

Beginning in 2004, California employees who took time off work to care for an ill parent, child, spouse, or domestic partner, or to bond with a newborn or newly-adopted child, could receive up to six weeks of pay through the state's Employment Development Department (EDD). The rate of pay is the same as if the employee receives disability benefits, and the benefit is paid by the EDD out of the disability insurance fund to which employees contribute via payroll deduction. The new law extends paid leave to cover care for ill grandparents, grandchildren, siblings and parents-in-law.

The paid family leave law does not provide employees with the right to take job-protected leave, however. It only provides pay if the employee is otherwise able to take time off work. Family leave where reinstatement is guaranteed under the Family and Medical Leave Act or the California Family Rights Act is not available to all employees. Those laws only cover employers with 50 or more employees, and the employee must have been employed for at least a year, must have worked at least 1,250 hours in the preceding 12 months prior to the leave, and must work at a location where at least 50 employees are employed in a 75-mile radius. Employees may only take up to 12 weeks of protected leave per year. Care for grandparents, grandchildren, siblings and in-laws is not covered by FMLA/CFRA in any event.

Time off to care for an ill relative need not be provided as a "reasonable accommodation" under the disability discrimination laws. Therefore, if employees do

not qualify under FMLA/CFRA, they have no right to job-protected leave regardless of the "paid family leave" law unless their employer has policies providing for additional leave beyond what FMLA/CFRA require.

You should examine your leave policies before this new law takes effect to ensure that the policies are clear as to when employees will be entitled to job-protected leave regardless of their ability to obtain pay for such leave.