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California Expands the CFRA To Include Bereavement Leave

As part of more than 100 new pieces of legislation, on September 29, 2022, California Governor Gavin Newsom signed AB 1949. Effective January 1, 2023, AB 1949 adds section 12945.7 to the Government Code to require employers with more than five employees to provide eligible employees with five days of unpaid bereavement leave.

AB 1949 Provides Five Days Unpaid Bereavement Leave for a Qualifying Family Member

Existing law under the California Family Rights Act (CFRA) requires employers to allow eligible employees up to 12 workweeks of unpaid protected leave for family care and medical leave. AB 1949 now additionally requires employers subject to the CFRA to allow eligible employees to take up to five days of bereavement leave upon the death of a "family member." The bereavement leave may be unpaid, though employees may (but are not required to) use other paid time off including vacation, personal leave, accrued and available sick leave, and compensatory time off otherwise available. If the employer already has a policy allowing for fewer than five days of bereavement leave, it must increase the available amount to meet the required five days. Additionally, eligible employees must complete the leave within three months of the death, though the days of leave need not be consecutive.

Employers may request documentation of the death of a family member, including a death certificate; a published obituary; or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency. If an employer requests documentation, the employee must provide it within 30 days of the first day of leave. The employer is required to keep the documentation confidential.

To be eligible, employees must be employed for at least 30 days before the start of the leave. Qualifying family member deaths under section 12945.7 include that of a "spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law."

AB 1949 makes it an "unlawful employment practice" under CFRA to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual for taking a bereavement leave as set forth in the law, or to participate in proceedings or inquiries related to the employee or someone else's request/denial of a protected bereavement leave.

In addition to the requirements imposed on employers, AB 1949 also amends section 12945.12 to require the California Civil Rights Department (formerly the Department of Fair Employment and Housing) to expand its small employer family leave mediation pilot program (applicable to those employers with five to 19 employees) to include mediation for violations of this new bereavement leave requirement.

Takeaways for Employers

Before 2023, employers with more than five employees should review and amend their leave policies to include the requisite bereavement leave. Experienced legal counsel can assist in creating new policies or drafting and implementing changes to existing policies.

Authors

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