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California Employers Required To Provide Reproductive Loss Leave Starting January 1



California Governor Gavin Newsom signed into law [SB 848](#) on October 10, 2023.

This new law expands California's Fair Employment and Housing Act (FEHA) to provide covered employees with protected leave after a reproductive loss. Under existing law, it is "unlawful for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member." SB 848 expands FEHA's protections and makes it an "unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of reproductive loss leave following a reproductive loss event." The new law takes effect January 1, 2024.

This new law applies to public employers and private employers with five or more employees. An "employee" is defined as any person employed by the employer for at least 30 days prior to the commencement of the leave. Under the law, a "reproductive loss event" is broadly defined as a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction. The right to this leave applies to persons who would have been a parent of the child had the event not occurred.

An employee has three months from the date of the entitling event to complete the reproductive loss leave; the days the employee utilizes for reproductive loss leave need not be consecutive. If an employee experiences more than one reproductive loss event within a 12-month period, the employer is not required to provide leave time in excess of 20 days within the 12-month period.

Under the law, reproductive loss leave can be unpaid, but an employee may use available vacation, personal leave, accrued and available sick leave, or compensatory time off. The new law further specifies that it is unlawful for an employer to retaliate against an individual because of (1) the individual's exercise of the right to reproductive loss leave or (2) an individual's provision of information or testimony as to their own reproductive loss leave, or another person's reproductive loss leave, in an inquiry or proceeding related to rights guaranteed by FEHA. Further, an employer may not interfere with, restrain, or deny the exercise of, or the attempt to exercise,

any reproductive loss right guaranteed by the law. Employers are also required to maintain the confidentiality of any employee requesting leave for a reproductive loss.

California employers should review their company policies and procedures to ensure compliance with the new law and contact experienced counsel with questions.

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