



for your information®

buck

Volume 34 | Issue 87 | November 4, 2011

California Requires Employers to Maintain Health Coverage for Employees on Pregnancy Disability Leave

California Governor Jerry Brown recently signed into law two closely related bills that will provide additional protections for employees taking pregnancy-related leave, effective January 1, 2012. S.B. 299 requires employers to continue group health insurance coverage for up to 16 weeks for employees disabled due to pregnancy, childbirth or a related medical condition. A.B. 592 makes it an unlawful employment practice for an employer to interfere with, restrain, or deny an employee's pregnancy leave rights.

Background

Under the California Family Rights Act (CFRA), covered employers must allow an eligible employee to take up to 12 weeks of job-protected leave during a 12-month period for any of the following reasons: (1) to bond with the employee's newborn, newly adopted, or newly placed foster child; (2) to care for the employee's parent, spouse, or child with a serious health condition; or (3) for the employee's own serious health condition. To be eligible for leave under CFRA, an employee working in California must have at least 12 months service with the covered employer and have worked at least 1,250 hours in the 12-month period preceding leave. Like the federal Family and Medical Leave Act (FMLA), CFRA applies to employers with 50 or more employees within 75 miles of where the employee taking leave works. An employer that provides health benefits under a group health plan must continue the employee's group health care coverage during CFRA leave.

Although CFRA leave rights do not apply to pregnancy and related conditions, California's Pregnancy Disability Leave (PDL) law provides job-protected leave for employees who are disabled by pregnancy. The PDL law generally requires employers with five or more employees to allow employees disabled by pregnancy, childbirth, or related medical conditions to take up to four months of protected leave in a 12-month period for the disabling condition. Employers must also provide reasonable accommodation for pregnancy-related conditions. In contrast to CFRA and FMLA, employees are PDL-eligible regardless of their length of service with the employer or full- or part time status. If an employer provides more than four months of leave for other temporary disabilities, it also must provide the same leave for women with pregnancy-related disabilities. Unlike CFRA, California law currently in effect does not expressly require employers to continue health care coverage for employees while on PDL.

Extended Pregnancy Disability Coverage

On October 6, 2011, California Governor Jerry Brown signed into law [S.B. 299](#), which requires employers to continue group health insurance coverage for up to 16 weeks for employees disabled due to pregnancy, childbirth or a related medical condition. Group health benefits must be continued for the duration of the pregnancy disability leave at the same level and under the same conditions that would have applied if the employee had not

taken leave. Employers that pay the entire health insurance premium for employee coverage must continue to do so for up to four months of PDL. If the employee normally contributes, the employer may require her to continue paying her portion of the premiums (for self or dependent coverage) during her leave.

BUCK COMMENT. *Because FMLA leave for pregnancy and related medical conditions generally runs concurrently with PDL, employers with at least 50 employees already are required to maintain health care coverage for FMLA-eligible employees during overlapping leave periods of up to 12 weeks. Beginning with the new coverage requirement in 2012, employers with as few as five employees will have to continue health coverage for up to four months for any employee on PDL, regardless of her FMLA-eligibility. For employees who are not FMLA-eligible (such as those with less than 12 months service), this new law will provide a new entitlement to coverage continuation.*

If the employee does not return from leave, the employer generally may recoup premiums it paid for continued coverage during the leave. However, the employer would not be allowed to recover premiums if the employee fails to return due to a continuing disability or because she takes a protected FMLA/CFRA leave.

Leave Protections Clarified

On October 9, 2011, California Governor Jerry Brown signed into law a companion bill, [A.B. 592](#), which clarifies existing protections under California law for employees disabled by pregnancy, childbirth, or a related medical condition. The new law amends Section 12945 of the California Government Code to make clear that it is an unlawful employment practice for an employer to interfere with, attempt to interfere with, restrain, or deny any employee rights provided under CFRA or the PDL law.

Conclusion

The new laws, which will impact most California employers, are intended to ensure that women do not lose employer-provided health care coverage while on pregnancy-related leave. Critics of the continuation coverage requirement contend that it conflicts with the federal Employee Retirement Income Security Act of 1974, which preempts state and local laws relating to employee benefit plans. Barring a successful legal challenge, the requirement will take effect next year.

Beginning January 1, 2012, employers with five or more California employees must be prepared to maintain health benefits for employees taking PDL, even if they are ineligible for FMLA leave. Employers should train their managers, supervisors, and Human Resources personnel on how to handle pregnancy-related leaves, and update their employee handbooks, leave policies and procedures, and employee communications to reflect the extended health insurance benefits.

Buck's consultants would be pleased to discuss the leave rules with you and assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.