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Leave it to California

California employees will enjoy additional leave entitlements starting in 2024 thanks to two bills recently signed into law by Governor Gavin Newsom. Senate Bill 616 increases the amount of paid sick leave an employee is entitled to accrue and makes other changes with respect to accruals, frontloading, carryover and use caps. Senate Bill 848 allows employees to take up to five days leave for a reproductive loss.

Background

With certain exceptions, California's Healthy Workplaces, Healthy Families Act of 2014 (HWHFA) requires employers — regardless of size — to provide most workers with at least 24 hours or three paid sick days each year and imposes procedural requirements regarding the use of those days. Full-time, part-time, and temporary workers are eligible for paid sick days if they work for the same employer in California for at least 30 days. However, HWHFA's paid sick leave requirements do not extend to employees covered by collective bargaining agreements (CBAs) that expressly provide for paid sick days, paid leave or other paid time off (PTO) and meet certain other conditions.

Existing law generally requires paid sick leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment. Employers may use an alternative accrual method as long employees accrue at least 24 hours or three days of paid sick leave or paid time off by the 120th calendar day of employment, calendar year, or 12-month period. While unused accrued paid sick days must be carried over to the following year or period, an employee's total accrual may be capped at 48 hours or six days, and the use of accrued leave may be limited to 24 hours or three days in each year or period. No accrual or carryover is required if the full amount of leave (i.e., three days or 24 hours) is frontloaded.

Expanding paid sick leave rights

On October 4, Governor Gavin Newsom signed Senate Bill (SB) 616 into law, which amends the HWHFA and provides most employees working in California with two additional paid sick days per year. The new law increases the amount of paid sick leave employers must provide to eligible employees each year from three days or 24 hours to the greater of five days or 40 hours, starting January 1, 2024.

Accrual cap

SB 616 increases the cap on an employee's total sick leave accrual from 48 hours or six days at any one time to the greater of 80 hours or ten days at any one time.

Alternate accrual method

SB 616 modifies the minimum accrual for the alternate accrual method under existing law to require that employees accrue at least 40 hours or five days of paid sick leave or PTO by the 200th day of employment, calendar year, or 12-month period.

Frontloading

SB 616 increases the frontloading requirement from at least three days or 24 hours of paid sick leave or PTO to at least five days or 40 hours of paid sick leave or PTO per year. Employers may still require new hires to wait until their 90th day of employment to begin using the sick leave or time off.

Carryover and usage cap

SB 616 raises the limit on the employee's annual usage cap from 24 hours or three days per year to 40 hours or five days of paid sick time per year. No accrual or carryover is required if the full amount of leave is provided at the beginning of each year of employment, calendar year, or 12-month period.

CBA-covered employees

SB 616 extends certain HWHFA protections to union employees covered by CBAs who were previously exempted from the paid sick leave statute. However, employers cannot require CBA-covered employees to find a replacement to cover their absence, or retaliate or discriminate against them for taking qualifying leave.

Preemption

Finally, the new law provides that the changes made by it apply to all cities, including charter cities, and its provisions preempt any local ordinance to the contrary.

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Reproductive-related losses

On October 10, Governor Newsom signed Senate Bill (SB) 848, expanding California's Fair Employment and Housing Act (FEHA) protections. Starting January 1, 2024, public employers and private employers with five or more employees will be required to provide eligible employees with protected leave following a reproductive loss event. The law broadly defines a "reproductive loss event" as a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

Like California's bereavement leave law, SB 848 allows employees who have been employed by a covered employer for at least 30 days to take up to five days of leave within three months following a qualifying event. While an employee may take leave for multiple reproductive loss events, employers are not required to provide more than 20 days of reproductive loss leave within a 12-month period. Leave shall be taken pursuant to any existing applicable leave policy of the employer. If there is no existing applicable leave policy, reproductive loss leave may be unpaid, but employees must be allowed to use otherwise available leave balances — such as sick leave, or other paid time off — for this purpose.

Notably, SB 848 does not allow employers to request any documentation in connection with reproductive loss leave and requires them to maintain employee confidentiality relating to such leave. In addition, it broadly prohibits an employee from interfering with an employee's right to reproductive loss leave, and discriminating or retaliating against them for requesting or taking such leave.

In closing

Starting in 2024, California employers will be required to provide at least five paid sick days each year and up to five days of reproductive loss leave following a qualifying event. Employers should review and update as needed their company policies and procedures, handbooks, and CBAs to ensure compliance with the new leave laws.

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