

California Expands Parental Leave to Smaller Businesses

Businesses that employ at least 20 people should take practical steps to comply with the New Parent Leave Act.

Key Points:

- The New Parent Leave Act significantly expands required parental leave, which previously only applied to businesses with at least 50 employees.
- Interpretation of the new law should be consistent with the California Family Rights Act.
- Employers may now participate in a temporary parental leave mediation program if sued by an employee.

On October 13, 2017, California Governor Jerry Brown signed into law Senate Bill 63 (SB 63),¹ which extends certain leave requirements to businesses that employ at least 20 people who work within a 75-mile radius of a worksite.² Specifically, the new law extends the requirement that these employers provide employees with up to 12 weeks of unpaid leave in a 12-month period in order to bond with a new child within one year of the child's birth, adoption, or foster care placement.³ The employer must guarantee, either on or before the commencing of the leave, that the employee will be reinstated to the same position or a comparable position.⁴ SB 63 — like the currently enforced California Family Rights Act (CFRA) — applies to employees who have provided at least 12 months of service and who have worked at least 1,250 hours in the preceding 12 months.⁵ Notably, SB 63 does not provide leave for the employee's own serious health condition or to care for a family member with a serious health condition.

Background: California Family Rights Act

Under CFRA,⁶ California currently provides up to 12 weeks of unpaid family care and medical leave rights to employees who have: (1) worked at least 12 months for an employer and (2) worked at least 1,250 hours in the 12 months prior to seeking leave. Employees may take leave for their own serious health condition, to care for a seriously ill family member, or to bond with a new child during the 12 months following the birth, adoption, or foster care placement of the child.⁷

Employees working for smaller employers historically did not benefit from CFRA's parental leave protections. As previously drafted, CFRA provided job-protected leave for employees who worked at worksites in which their employer employed at least 50 employees within a 75 mile radius of the worksite.⁸

Under SB 63, like under existing law, eligible employees are entitled to continuation of healthcare benefits on the same terms as active employees. In addition, employers are required to allow employees to use accrued vacation pay, paid sick time, and/or other accrued paid time off during the leave.⁹

SB 63 specifies that the existing regulations issued under CFRA be applied to the new law to the extent they are not inconsistent with it.¹⁰ Consequently, SB 63 should be interpreted in the same manner as CFRA.

New Parental Leave Mediation Program

SB 63 also provides for the creation of a parental leave mediation pilot program (currently effective through January 1, 2020) under which an employer may elect mediation within 60 days of the employer's receipt of a notice of the employee's right to sue.¹¹ If an employer elects mediation, then the new law prohibits an employee from pursuing a civil action until the mediation is completed and tolls the statute of limitations as to claims under the new law (and related claims) until completion of the mediation. Parental leave mediations are "complete" upon notice to the Mediation Division Program.¹² SB 63's mediation program sunsets on January 1, 2020, and is contingent upon California's Department of Fair Employment and Housing receiving "necessary funding."

Eligibility for leave under SB 63 does not affect the right of a female employee disabled by pregnancy to take up to four months of job-protected leave under California Government Code Section 12945.

Practical Tips for Employers

California employers can take practical steps to ensure proper compliance with the new policy. In particular, employers with at least 20 employees within a 75 mile radius of the worksite should:

- Adopt a policy compliant with SB 63 on or before January 1, 2018, when the new law goes into effect
 - Existing policies applicable to larger employers are a good reference point.
- Train the Human Resources Department to implement the new policy
 - Affirmatively advising employees of their reinstatement rights is critical.

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Endnotes

¹ Codified at Cal. Gov’t Code Section 12945.6.

² Employees eligible for leave under the Federal Family and Medical Leave Act, and/or under CFRA, are not eligible for leave under this new law. *Id.* § 12945.6(c).

³ *Id.* § 12945.6(a)(1).

⁴ *Id.*

⁵ *Id.*

⁶ Also known as the Moore-Brown-Roberti Family Rights Act. Cal. Gov't Code §§12945.2,19702.3.

⁷ *Id.* § 12945.2(a)-(c).

⁸ *Id.* § 12945.2(a).

⁹ *Id.*

¹⁰ *Id.* § 12945.6(j).

¹¹ *Id.* § 12945.6(k).

¹² *Id.*