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In legislation described as giving more employees the ability "to take time off to care for themselves or a sick family member without fearing they'll lose their job," Governor Gavin Newsom signed into law Senate Bill (SB) 1383 on September 17, 2020, and expanded the breadth of California's family and medical leave law.

Under the California Family Rights Act's (CFRA) existing provisions, employers with 50 or more employees must provide certain employees up to 12 weeks' unpaid protected family and medical leave per year to bond with a new child or to care for themselves, a child, a parent, or a spouse. Family Code section 297.5 extended the spousal protections to domestic partners. Effective January 1, 2018, the New Parent Leave Act ("NPLA") extended the CFRA's child bonding protections to certain employees of employers with as few as 20 employees.

SB 1383, which becomes effective January 1, 2021, nullifies the NPLA, extends CFRA's leave provisions to employers with as few as five employees, and provides job protection to return to work in the same or comparable position upon termination of leave. To be eligible, employees must be employed for at least 12 months and have at least 1,250 hours of service with the employer during the 12 months before taking leave.

Eligible employees may take up to 12 weeks' unpaid protected time off to bond with a new child or to care for themselves, a child, parent, or spouse/domestic partner who has a serious health condition. In addition, leave must

also be provided to care for a grandparent, grandchild, or sibling. Notably, the definition of "child" was revised to eliminate the requirement that the child be under 18 years of age or an adult dependent child. As a result, leave may now be taken for any child, which includes a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands *in loco parentis*. The revised provisions also require employers who employ both parents of a child to provide up to 12 weeks' leave to each employee in connection with the birth, adoption or foster care placement of a child—previously, if both parents were employed by the same employer, CFRA only required employers to provide a total of 12 weeks' leave between the two employees.

In addition, the new provisions add a new basis to take protected leave. Specifically, similar to provisions applicable to large employers under federal law, SB 1383 permits eligible California employees to take CFRA leave due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the United States Armed Forces.

The revisions also eliminate prior language that authorized covered employers to refuse reinstatement to the same or comparable position following leave to salaried employees who were among the highest paid 10% of employees employed within 75 miles of the salaried employee if the refusal was necessary to prevent substantial and grievous economic injury to the operations of the employer. Accordingly, employers may no longer use that exception to deny reinstatement.

As with the prior version of the law, covered employers must maintain and pay for coverage under a group health plan for the duration of the leave, not to exceed 12 workweeks in a 12-month period, at the level and under the conditions coverage would have been provided if the employee had continued employment for the duration of the leave.

Finally, in a companion to SB 1383, Assembly Bill (AB) 1867—signed into law on September 9, 2020—creates a mediation pilot program to address disputes against employers with five to 19 employees alleging violation of the family and medical leave provisions of CFRA. For more information on the mediation pilot program, check out our prior post here.

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