



Summary of Leave Law Changes

Private Employer Sector

For the period covering: April 2014



sedgwick

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The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company’s attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

California

Family Leave Amendments – Proposed

Notice of Proposed Amendments Update and Reminders

As previously announced by the Fair Employment and Housing Council (DFEH), DFEH released proposed regulations to amend sections 11087 to 11098 of Title 2 of the California Code of Regulations (“Family Care and Medical Leave”). The proposed regulations are intended to clarify some aspects of the existing regulations and adopt many of the recent amendments to the federal FMLA regulations to make the two acts more consistent.

Some clarifications to the proposed regulations include making clear that same-sex spouses are covered under CFRA and that the FMLA regulations apply to CFRA leave “to the extent not inconsistent” with the CFRA regulations. In addition, the proposed regulations require a California employer to maintain the employee's group health benefits for the whole leave time period (and not just up to 12 weeks).

In addition, other areas the proposed regulations address are:

1. Length of service/eligibility issues - the Council proposes to use the Labor Code and Industrial Welfare Commission Wage Orders, rather than the federal Fair Labor Standards Act, to define the term “actually worked.” In addition the Council proposes updating the language around length of service to conform to the federal family medical leave act (FMLA).
2. The certification process and timeframes for responding to employee requests for CFRA leave - the Council proposes to add “no less than” before “15” to emphasize that employers may grant more than 15 days for employees to obtain certification. This change is necessary for clarity, because 15 days is meant to be a minimum and not a maximum.
3. Computation of amount of leave entitlements – the Council proposes the addition of this section will make clearer how to calculate CFRA entitlements and to proscribe minimum leave durations.
4. Key employee issues, clarification of reinstatement rights - the Council proposes to adopt the FMLA’s procedure for notice of key employee status and how to treat a key employee on leave, because the CFRA regulation as currently drafted is too cursory. The Council proposes to rephrase the federal regulation to maximize clarity.
5. Retroactive designation of leave - the Council proposes to add “without the employee’s consent” to underscore that retroactive designation of leave as CFRA leave is prohibited unless the FMLA provides for it or an employee consents. This proposed amendment is not substantive, but rather reaffirms that the employer and employee may agree to terms outside of the typical

CFRA framework.

6. The interplay between CFRA leave and California pregnancy disability leave - the Council proposes to clarify that, like disability leave and CFRA leave, pregnancy disability leave and CFRA leave are related but separate and distinct entitlements. This change is necessary to clarify misconceptions that the different types of leaves are combined rather than cumulative.

Additional information, including the proposed amendment text can be viewed on the DFEH [website](#) and by viewing the following:

[Notice](#) of Proposed Amendments
[Text](#) of the Proposed Amendments

Employers covered by CFRA should carefully review the proposed regulations and consider whether to submit comments and/or proposed revisions. There is a public comment period through June 2, 2014.

Comments can be submitted via email to FEHCouncil@dfeh.ca.gov. There was a public hearing on the proposed amended regulations at 10:00 a.m. on April 7, 2014 at UC Irvine School of Law, and there will be an additional hearing at 10:00 a.m. on June 2, 2014 at the California Public Utilities Commission Main Auditorium in San Francisco.

Additional information can be found on the DFEH website [here](#).

District of Columbia

Fair Leave Act of 2014 – Proposed

DC B20-0734. Proposed: April 20, 2014. Representative: Grosso.

The bill creates the family and medical leave insurance program in the newly created division of family and medical leave insurance (Division) in the department of labor and employment (Department) to provide partial wage replacement benefits to eligible individuals who take leave from work to care for a new child or a family member with a serious health condition or who are unable to work due to their own serious health condition.

Each employee in the state that has not opted out of the program will pay a premium based on a percentage of the employee's yearly wages. The premiums would then be deposited into the family and medical leave insurance fund from which family and medical leave benefits are paid to eligible individuals.

The law can be reviewed by visiting [here](#).

Maine

Emergency Service Leave – Passed

PL 477. Effective: March 16, 2014.

Maine Governor Paul LePage has signed a law protecting municipal fire department members from being discharged or having disciplinary action taken against them by their employers for responding to emergencies, effective March 16, 2014.

Current law did not apply to municipal fire departments and so the members of municipal fire departments were not protected from being discharged or having disciplinary action taken against them by their employers for responding to emergencies. Prior law extended such protection to volunteer firefighters only. In the law's emergency preamble, it is noted that many volunteer fire departments are becoming municipal fire departments.

The bill can be reviewed by visiting [here](#).

Maryland

Parental Leave Act – Passed

HB 1026. Effective: October 1, 2014. Representative: A. Kelly.

Effective October 1, 2014, certain Maryland employers will be required to provide eligible employees unpaid parental leave for the birth, adoption, or fostering of a child.

The Parental Leave Act requires companies with 15 to 49 employees to provide their employees with unpaid parental leave benefits and gives the Department of Labor, Licensing, and Regulation (“DLLR”) regulatory authority regarding the bill.

Under the law, an employer may not discharge or otherwise discriminate against an employee because the employee: (1) has requested or taken parental leave; (2) makes a complaint; (3) brings an action under the bill; or (4) has testified or will testify in an action or proceeding under the bill.

The law allows eligible employees to take up to a maximum of six weeks of unpaid parental leave in a 12-month period for the birth, adoption, or foster placement of a child.

To be eligible for unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. The law does not apply to: (1) independent contractors; or (2) individuals employed at work sites where the employer employs fewer than 15 employees if the total number of employees employed by that employer within a 75-mile radius of the work site is also fewer than 15.

The bill can be reviewed by visiting [here](#).

New York

New York City Paid Sick Leave – Reminder

PL 2014/007. Signed: March 20, 2014. Mayor of New York City, Bill de Blasio.

The new mayor of New York City, Bill de Blasio, passed and signed the expanded version of the city's new paid sick leave law, known as the Earned Sick Time Act (ESTA).

Under the new law, effective April 1, 2014, businesses with five or more employees are required to provide up to 40 hours of paid sick time to employees who work 80 or more hours per calendar year. Under the prior version of the law, the threshold number of employees was 15. However, the New York City Council reduced that threshold to five, among other things, by a vote of 46-5 on February 26, 2014.

Businesses with less than five employees are required to provide the same amount of sick time to employees who work at least 80 hours a calendar year, but on an unpaid basis.

The law can be reviewed by visiting [here](#).

West Virginia

Pregnancy Discrimination – Passed

HB 4284. Effective June 4, 2014. Representative: Perdue.

NOTE: The following is informational only. Sedgwick will not be administering this as a leave since it is a discrimination/accommodation type law.

West Virginia Governor Earl Ray Tomblin has signed the Pregnant Workers' Fairness Act, effective June 4, 2014. The law makes it an unlawful employment practice for a "covered entity" to do any of the following:

1. Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee, following delivery by the applicant or employee of written documentation from the applicant's or employee's health care provider that specifies the applicant's or employee's limitations and suggesting what accommodations would address those limitations, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business;
2. Deny employment opportunities to a job applicant or employee, if such denial is based on the refusal of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;
3. Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept; or
4. Require an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee.

The law can be reviewed by visiting [here](#).

Wisconsin

Paid Family Leave – Proposed

AB 898. Proposed: April 2, 2014. Representative: Mason.

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in this state (employer) must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52-week period (employee) to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period.

If passed, this bill would require an employer, including the state, that employs at least one individual full-time or part-time on a permanent or temporary basis, to provide an employee who has been employed by the employer for at least 90 consecutive calendar days with paid sick leave at the employee's regular rate of pay that the employee may use for any of the following reasons:

1. Because the employee has a physical or mental illness, injury, impairment, or condition (health condition); is in need of medical diagnosis, care, or treatment of a health condition; or is in need of preventive medical care.
2. To care for a family member who has a health condition; who is in need of medical diagnosis, care, or treatment of a health condition; or who is in need of preventive medical care.
3. Because the employee's absence from work is necessary in order for the employee to do any of the following:
 - a. Seek medical attention or obtain psychological or other counseling for the employee or a family member to recover from any health condition caused by domestic abuse, sexual abuse, or stalking.
 - b. Obtain services for the employee or a family member from an organization that provides services to victims of domestic abuse, sexual abuse, or stalking.
 - c. Relocate the residence of the employee or of a family member due to domestic abuse, sexual abuse, or stalking.
 - d. Initiate, prepare for, or testify, assist, or otherwise participate in any civil or criminal action or proceeding relating to domestic abuse, sexual abuse, or stalking.

The bill can be reviewed by visiting [here](#).

Organ Donation Leave – Proposed

AB 906. Proposed: April 2, 2014. Representative: Mason.

Under current law, an employer, including the state, employing at least 50 individuals on a permanent basis in the state of Wisconsin (employer) must permit an employee who has been employed by the employer for more than 52 consecutive weeks and who has worked for the employer for at least 1,000 hours during the preceding 52-week period (employee) to take six weeks of family leave in a 12-month period and two weeks of medical leave in a 12-month period. Family leave may be taken for the birth or adoptive placement of a new child or to care for a child, spouse, domestic partner, or parent who has a serious health condition. Medical leave may be taken when the employee has a serious health condition that makes the employee unable to perform the employee's employment duties.

If passed, AB 906 would allow an employee of an employer to take no more than six weeks of leave in a 12-month period for the purpose of serving as a donor of an organ that requires the continuous circulation of blood to remain useful for purposes of transplantation (organ) if the employee provides the employer with written verification that the employee is to serve as an organ donor (organ donation leave).

The bill applies to any employee of an employer regardless of the number of weeks and hours that the employee has worked for the employer, except that the bill does not apply to a state employee who under current law is already permitted to take a leave of absence of 30 workdays for the purpose of serving as an organ donor.

An employee is not entitled to receive wages or salary while taking organ donation leave, but may substitute, for portions of that leave, other types of paid or unpaid leave provided by the employer. An employee who intends to take organ donation leave must give the employer advance notice of the organ donation and must make a reasonable effort to schedule the organ donation so that the organ donation does not unduly disrupt the operations of the employer, subject to the approval of the health care provider of the organ donee.

The bill can be reviewed by visiting [here](#).