



Client Alerts

CALIFORNIA COMPLIANT: New Complexities for California Employers in Managing Family/Sick Leave

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Much like the Family Medical Leave Act, the California Family Rights Act (“CFRA”) provides eligible employees the right to take up to twelve weeks of leave for qualifying purposes. California employers often find managing leaves especially challenging because of important differences between the two laws. Beginning January 1, 2023, those challenges will grow: newly-adopted AB 1041 adds “designated persons” selected by the employee to the list of those whose health condition can support a request for family care leave or mandatory paid sick leave.

Family Care Leave

Currently, CFRA allows employees to take leave to care for several categories of family members who suffer from a serious health condition. “Designated persons” selected by the employee will join that list. That term is vaguely defined to mean “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” AB 1041 provides no guidance as to what “blood relationship” would qualify, or how to determine “the equivalent of a family relationship.” Complicating matters, the employee may select the “designated person” at the time of requesting the leave. The employer’s only consolation is that it may limit the employee to a single “designated person” in a given “12-month period for family care and medical leave.”

Paid Sick Leave

AB 1041 also added “designated persons” to the list of family members for whom paid sick leave may be taken under California’s law mandating paid sick leave, the “Healthy Workplaces, Healthy Families Act of 2014.” Unlike the new CFRA provision, however, there is no corresponding definition limiting even generally who may be “designated.” No “family relationship” is required. Again, however, the employer may limit the designation to one specified person for a 12-month period.

California employers should modify handbooks and policies and formulate their action plan now in anticipation of both changes. Managers and HR teams should arrange to document any “designation” and to apply the twelve-month limitation on additional designations. Managers also should be cautioned to avoid potential future retaliation and discrimination claims by limiting inquiries about “family relationships” or why sick leave is being taken for the “designated person.”

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