



## Client Alerts

### CALIFORNIA COMPLIANT: California Establishes Mandatory Bereavement Leave

January 20, 2023 | (Time to read: 2 minutes)

**The California Family Rights Act (“CFRA”) provides eligible employees the right to take up to twelve weeks of leave for qualifying purposes, including to care for a family member. Effective January 1, California adds bereavement leave for the death of a family member to the many other leaves to which employees are entitled.**

AB 1949 grants to eligible employees a right to five days of bereavement leave after the death of a family member as defined in the act. Employees are eligible for such leave after just 30 days of employment. The list of family members whose passing qualifies the employee for leave is not as broad as CFRA's list. The deceased family member must be “a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.” Upon request, within 30 days of the first day of leave, the employee must provide documentation of the family member's death.

Many employer bereavement leave policies provide for leave only shortly after the relative's passing. The new law is more generous; leave may be taken up to 3 months after the family member's death. Moreover, leave need not be taken consecutively. The affected employee can choose when to take the leave and theoretically could take multiple single days during the 3-month period. The leave is in addition to any right to leave under CFRA.

Bereavement leave is to “be taken pursuant to any existing bereavement leave policy of the employer.” The leave is unpaid to the extent not paid under existing policy. Employees are free to use vacation, personal leave, sick leave, or paid compensatory time off to cover the leave. The employer also is required to “maintain the confidentiality of any employee requesting leave.” Supporting documentation must be “maintained as confidential” and not disclosed except to internal personnel or counsel as necessary or as required by law.

All of the enforcement processes and remedies of the Fair Employment and Housing Act are available to employees affected by violations of the new bereavement leave entitlement or by adverse actions (loss of employment or other forms of discrimination or retaliation) because of the exercise of the right to bereavement leave. “Interfering with” or denying the exercise of or attempt to exercise leave rights likewise is an unlawful employment practice.

California employers should modify handbooks and policies and formulate their action plan now in anticipation of the new leave requirement. Managers and HR teams should be cautioned to avoid potential future retaliation and discrimination claims by limiting inquiries about requests for bereavement leave beyond permitted requests for documentation and also avoiding challenges to non-consecutive leave requests.

James H. Berry, Jr. and Kate LaQuay are resident in Munck Wilson's Los Angeles office.

\*\*\*

*Munck Wilson Mandala is a full-service law firm known for its accomplished teams that represent clients in employment counselling and litigation nationwide. The firm has offices in Texas, California, and Florida and represents clients from start-ups to Fortune 50 companies. Learn more about the firm at <https://www.munckwilson.com> .*

### Related People

- James H. Berry Jr.
- Kate LaQuay