



## Client Alerts

### California Compliant: California Workers Entitled to Leave for “Reproductive Loss” Beginning January 1st

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As expected, Governor Newsom has signed into law a bill granting California workers the right to take a limited amount of unpaid leave because of a “reproductive loss.” Senate Bill 848 (SB 848) adds to the Government Code Section 12945.6, which will be effective on January 1, 2024.

#### Employees’ Existing Right to Take Bereavement Leave

Last year, the Legislature amended the California Family Rights Act (CFRA, Government Code Section 12945.2, *et seq*) to grant eligible workers the right to take unpaid leave after the death of a family member. Government Code Section 12945.7, which became effective on January 1, 2023, requires companies employing five or more workers to grant up to five days of unpaid leave because of the death of a “family member.” That Section defines “family member” as including: “a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in Section 12945.2.”

Employees are eligible for “bereavement leave” if they have worked for their employer for at least 30 days. Bereavement leave may be taken within three months of the date of the family member’s death. Employees need not take the days consecutively – an eligible employee could take two days off, and then another three days off later, so long as the leave all is used within three months of the triggering event.

#### Employees’ New Right to Take Leave for “Reproductive Loss”

Section 12945.7 did not indicate whether the death of a “child” for purposes of bereavement leave would include events such as a miscarriage or stillbirth. With SB 848, the Legislature makes clear that employees are entitled to take unpaid leave because of a “reproductive loss event,” defined as “a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.” Each of those events is defined in the statute. A “failed surrogacy,” for example, includes not only a “failed embryo transfer to the surrogate,” but also “the dissolution or breach of a surrogacy agreement.” An “unsuccessful assisted reproduction” is “an unsuccessful round of intrauterine insemination or [] assisted reproductive technology procedure.” Generally speaking, the covered losses are those suffered by the employee or the employee’s spouse, domestic partner, or other individual who would have been a parent of the child if not for the reproductive loss.

The entitlement to leave for a reproductive loss mirrors the entitlement to bereavement leave in some ways. Like the bereavement leave required by Section 12945.7, leave for a reproductive loss under Section 12945.6 will apply to employers with five or more workers. Eligible employees are those who have worked for their employer for at least 30 days. Eligible employees need not take the leave days consecutively. The leave must be taken within three months of the triggering event, although an employee who takes another CFRA leave may complete their reproductive loss leave within three months of the end date of the other leave. An employee’s use of leave for reproductive loss may be capped; employers need not grant more than 20 days to a single employee within the same 12 month period during which the employee has experienced multiple reproductive losses.

Leave due to reproductive loss may be unpaid; however, an employee may choose to use accrued vacation or sick leave, if available. Employers must maintain as confidential the employee’s request for reproductive loss leave. The new law prohibits employers from interfering with the right to reproductive loss leave, or retaliating against an employee for taking such leave.



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### Implications for Employers

Employers will want to review their handbooks and other policies concerning the eligibility and use of leave to ensure compliance with the new law. Supervisors and HR may benefit from training about the types of losses that trigger the entitlement to leave, the use of such leave, the need to maintain confidentiality, and the prohibition against retaliation.

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