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ATTENTION CALIFORNIA EMPLOYERS! NEW LEGISLATION EXPANDS THE CALIFORNIA FAMILY RIGHTS ACT TO SMALL BUSINESSES

On September 17, 2020, Governor Gavin Newsom signed into law Senate Bill 1383 (SB 1383). Effective January 1, 2021, SB 1383 drastically extends employee entitlement to family and medical leave under the California Family Rights Act (CFRA), including by extending job-protected leave to California employees who work for businesses with five or more employees.

EXISTING CFRA PROTECTIONS

Under the current CFRA, eligible employees are permitted to take up to 12 weeks of unpaid, job-protected leave to:

1. Care for their own serious health condition;
2. Bond with a newborn child or in connection with the adoption or foster care of a child; and
3. Care for a parent, minor child or dependent adult child, or spouse with a serious health condition.

To be eligible for leave under the existing CFRA, an employee must work for an employer with at least 50 employees within a 75-mile radius of the employee and have worked for the employer for at least 1,250 hours in the 12 months preceding leave.

EXPANDED RIGHTS UNDER SB 1383

SB 1383 drastically expands California employees' entitlement to family and

medical leave under the CFRA. Most significantly, SB 1383 enlarges the CFRA to cover all California private employers with five or more employees, down from the previous threshold of employers with 50 or more employees.

SB 1383's other changes to the CFRA include:

- Expanding permitted uses of leave to include care for grandparents, grandchildren, siblings, domestic partners, children of domestic partners, and nondependent adult children;
- Permitting employees to take leave because of a qualifying exigency related to covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the U.S. Armed Forces;
- Removing the provision permitting employers to deny reinstatement to "key employees" following leave;

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- Requiring an employer of both parents of a child to grant each parent up to 12 weeks of leave for baby-bonding.

Current provisions of the CFRA that are unchanged by SB 1383 include: (1) the requirement that employers continue an employee's health insurance benefits at the same level as if they had been continuously employed during leave; and (2) an employee's right to reinstatement to the same or comparable position to the extent the employee would have remained in that position had they been continuously employed during leave.

POTENTIAL "STACKING" ISSUES WITH THE FAMILY AND MEDICAL LEAVE ACT

SB 1383 may create "stacking" issues where employees covered by the CFRA and the federal Family Medical Leave Act (FMLA) are entitled to a total of 24 weeks of protected leave in a 12-month period.

The current CFRA generally provides for the same permitted uses of protected leave as the FMLA—and leave under both laws runs concurrently so that employees are only entitled to a total of 12 weeks of leave in a 12-month period.

However, because SB 1383 expands the CFRA's permitted uses of leave beyond the FMLA, this could create a circumstance where an employee can use 12 weeks of CFRA leave and still be entitled to an additional 12 weeks of FMLA leave.

PREPARING FOR THE NEW CFRA

The new CFRA is effective January 1, 2021. All employers should consult with Finch, Thornton & Baird, LLP, or their own legal experts, to clarify—and prepare for—SB 1383's impact on their businesses. ■

Finch, Thornton & Baird, LLP is here for you as the impact of Coronavirus is felt throughout your business. For more information, please contact Chad T. Wishchuk, Esq. at (858) 737-3100.

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