



Clarity on AB 1949 - California's New Bereavement Leave Law

October 31, 2022

California has enacted a new bereavement leave requirement into law, effective January 1, 2023. The new law requires employers with five or more employees, including those covered by a collective bargaining agreement, to provide up to five days of unpaid leave to eligible employees for the death of a family member. The bill defines "family member" as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law of the employee.

There seems to be confusion within the industry on if the bereavement leave authorized under AB 1949 is paid or unpaid. Upon introduction, we worked with the author to ensure the leave was "unpaid leave" and that the proposed law was not changed to "paid leave" throughout the legislative process. To be clear, AB 1949 does not provide any new state mandated paid time off. With that in mind, while on bereavement leave, an employee can use other available paid time off such as vacation pay, personal leave, or sick leave that they may have accrued.

Under the new law, bereavement leave is only available to employees who have worked for the employer for at least thirty days prior to the commencement of the leave. The five days of leave do not need to be taken consecutively but must be completed within three months of the death of the family member.

Employers are allowed to confirm the need for leave by asking for documentation, such as a death certificate, a published obituary, or a written verification of death, burial, or memorial services from a funeral home or other applicable entity. The request from the employer for documentation must occur within thirty days of the employee's first day of leave.

The bill includes enforcement provisions that allow employees to file claims against employers who prevent them from taking bereavement leave or who take adverse employment actions against employees who take their leave. However, an especially crucial point for employers is that the bill is codified under the California Government Code and not the California Labor Code. This means that, while employers may see retaliation claims stemming from this new law, employees will not be able to file claims under the Private Attorneys General Act (PAGA) for any alleged violations.