
California Provides Protected Leave for Reproductive Loss

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Effective January 1, 2024, eligible employees in California may take up to five days of protected leave after experiencing a reproductive loss event. Senate Bill 848 amended the California Fair Employment and Housing Act by adding Government Code section 12945.6 to make it unlawful for covered employers to refuse to grant an eligible employee leave following a reproductive loss event.

Reproductive Loss Event Defined

A “reproductive loss event” is defined as the day, or for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction (such as artificial insemination or embryo transfer).

Covered Employer and Eligible Employees

Covered employers include those with five or more employees, a state, a city, a county, or any other political or civil subdivision of the state.

An eligible employee is one who has worked for the covered employer for at least thirty days and experienced a reproductive loss event. SB 848 affords reproductive loss leave to both employees who physically experience a reproductive loss event and to employees who would have been a parent but for the reproductive loss event. For example, the following are qualifying reproductive loss events:

- An employee who would have been a parent of an adopted child if the adoption had been completed;
- An employee who would have been a parent of a child born as a result of a failed surrogacy;
- A current spouse or domestic partner of a person who experienced a miscarriage or stillbirth or an employee who would have been the parent of a child born because of a pregnancy that resulted in a miscarriage or stillbirth; and
- A current spouse or domestic partner of a person who experienced an unsuccessful assisted reproduction, or an employee who would have been a parent of a child born as a result of a pregnancy had the assisted reproduction been successful.

Leave Limitations

An eligible employee may take up to five days of protected leave within three months of the reproductive loss event. If an eligible employee experiences more than one reproductive loss event within a 12-month period, a covered employer may afford the

eligible employee up to 20 days of leave within a 12-month period. Leave can be taken on non-consecutive days. This leave is separate and distinct from any other leave afforded by state or federal law.

If prior to, or immediately following, a reproductive loss event, an eligible employee is on, or chooses to use, a different leave entitlement under state or federal law, such as the Family and Medical Leave Act (FMLA) or California Family Rights Act (CFRA), then the eligible employee must complete the reproductive loss leave within three months of the end date of the other leave.

The leave must be taken pursuant to any existing applicable leave policy of the covered employer. If there is no existing applicable leave policy, reproductive loss leave may be unpaid, but an eligible employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available.

A covered employer must maintain the confidentiality of an eligible employee requesting reproductive loss leave, unless disclosure is required by law.

Unlawful Conduct

Under SB 848, it is unlawful for a covered employer to:

- Refuse to grant a request by an employee to take reproductive loss leave;
- Retaliate against a person (e.g., refusing to hire, discharging, demoting, fining, suspending, expelling, or discriminating against) because of the person's taking or attempt to take reproductive loss leave, or the person's giving information or testimony as to their own or other's reproductive loss leave in an inquiry or proceeding related to their rights; or
- Interfere with, restrain, or deny the exercise of or attempt to exercise a person's reproductive loss leave rights.

Takeaways

Eligible employees in California now have a separate, protected right to take reproductive loss leave. Failure to afford eligible employees reproductive loss leave may subject covered employers to liability. If covered, employers should review and update their leave policies and collective bargaining agreements to reflect the new leave and requirements under SB 848. Covered employers should also update and train their staff on the new leave and its requirements.

If you have questions about reproductive loss leave or for help with any labor and employment issues, please contact the authors of this Client News Brief or any attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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