

EMPLOYMENT LAW UPDATE

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Senate Bill 1661, Representative Kuehl. Disability Compensation: Paid Family Care Leave

***The California Legislature Passes Bill Entitling Employees To Six Weeks of Wage Replacement Benefits During Family Care Leave***

*By Douglas J. Melton and Jason A. Geller*

In an effort to provide assistance to employees who are forced to take leave to care for seriously ill family members, the California Legislature has passed SB 1661, effective January 1, 2004, that will entitle employees to six weeks of wage replacement during the leave.

The Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) entitle eligible employees who are working for covered employers to take an **unpaid**, job-protected leave for up to twelve weeks in a twelve-month period. Under both the FMLA and the CFRA, employees may take unpaid leave for the birth, adoption or foster placement of a new child; to care for a seriously ill child, parent, or spouse; or for the employees' own "serious health condition."

Currently, California state disability insurance benefits provide wage replacement for workers who require time off for their **own** non-work-related injuries, illnesses or conditions,

including pregnancy. State disability insurance benefits currently do **not** provide wage replacement during leave required to care for an ill child, spouse, parent, domestic partner or to bond with a new child. SB 1661 will change the current law as set forth below.

The employee will be entitled to up to six weeks of pay, in an amount determined by statute, during a leave to care for a new child during the first year after the birth, or to care for a parent, spouse, child or domestic partner with a "serious health condition." (A "serious health condition" means an illness, injury, impairment or physical or mental condition that involves in-patient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider.)

An employer may require an employee to take up to two weeks of earned but unused vacation leave before the employee's initial receipt of paid

disability benefits, subject to any duties that an employer may have pursuant to a collective bargaining agreement.

While the bill becomes effective on January 1, 2004, the wage benefits shall be payable only for periods of leave commencing on or after July 1, 2004. The wage benefits will be available to all California employees – including part-time employees.

Significantly, the leave benefits will be funded through employee contributions to California's unemployment compensation disability insurance program, and administrative costs associated with maintaining the program shall be paid from California's State Disability Fund.

Finally, it is important to note that SB 1661 is not a new leave law, but rather provides for wage replacement for employees on certain family medical leaves. The terms of the new law will not impact an employer's obligations under the FMLA, the CFRA or the California Fair Employment and Housing Act.

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